

Corrections made to FEMA 322 – October 1999

Table of Corrigenda

Page	Modification
8	Replaced www.fema.gov navigation instructions with Public Assistance uniform resource locator.
84	Replaced "Alternate project funds may be used for hazard mitigation projects including construction of physical facilities, development of regulations, or other activities that would otherwise be eligible through the Hazard Mitigation Grant Program under Section 404 of the Stafford Act." with "Alternate project funds may be used for certain hazard mitigation projects."
	<i>Replaced the following items in Appendix B to conform to the format used in the U.S. Government Printing Office version.</i>
B-1	Changed "SUBCHAPTER I" to "TITLE I"
B-4	Changed "SUBCHAPTER II" to "TITLE II"
B-7	Changed "SUBCHAPTER III" to "TITLE III"
B-22	Changed "SUBCHAPTER IV" to "TITLE IV"
B-48	Changed "SUBCHAPTER IV-A" to "TITLE V"
B-51	Changed "SUBCHAPTER IV-B" to "TITLE VI"
B-54	Added "SUBTITLE A - POWERS AND DUTIES"
B-63	Added "SUBTITLE B - GENERAL PROVISIONS"
B-70	Changed "SUBCHAPTER V - MISCELLANEOUS" to "TITLE VII - AUTHORITY TO PRESCRIBE RULES AND ACCEPT GIFTS"
B-71	Added "MISCELLANEOUS STATUTORY PROVISIONS THAT RELATE TO THE STAFFORD ACT"
	<i>Replaced the following items in Appendix C to conform to the format used in the U.S. Government Printing Office version.</i>
C-10	Created subsection "(1) During the execution of approved work...." Changed subsections (1), (2), (3), to (i), (ii), (iii) Created subsection "(2) The subgrantee shall evaluate each...."
C-13	Changed §206.207 (1) to §206.207 (a) Changed "(a) State administrative plan." to "(b) State administrative plan."

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ACRONYMS USED IN THIS GUIDE

CBRA	Coastal Barrier Resources Act
CBRS	Coastal Barrier Resources System
CFR	Code of Federal Regulations
DFO	Disaster Field Office
DRM	Disaster Recovery Manager
EAD	Executive Associate Director, Response and Recovery Directorate (FEMA)
EO	Executive Order
ER	Emergency Relief (FHWA Assistance Program)
FCO	Federal Coordinating Officer
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FIRM	Flood Insurance Rate Map
GAR	Governor's Authorized Representative
NRCS	Natural Resources Conservation Service
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act
PA	Public Assistance
PAC	Public Assistance Coordinator
PAO	Public Assistance Officer
PDA	Preliminary Damage Assessment
PNP	Private Nonprofit
<i>PW</i>	<i>Project Worksheet</i>
RD	Regional Director (FEMA)
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service

CHAPTER 1

DISASTER ASSISTANCE OVERVIEW

Federal assistance in the wake of disasters is coordinated by the Federal Emergency Management Agency (FEMA). Under the Public Assistance (PA) Program, FEMA provides supplemental aid to communities and States¹ to help them recover from disasters as quickly as possible. This chapter describes the events that occur after a disaster strikes and provides an introduction to the PA Program.

When Disaster Strikes

Each year, the United States is struck by disasters that severely affect communities and State and local governments. The list of events that cause disasters includes natural events, such as hurricanes, tornadoes, storms, floods, earthquakes, fires, volcanic eruptions, landslides, snowstorms, and droughts, and non-natural events, such as fires, floods, and explosions caused by human activities. The effects of disasters may be limited to a single community, such as when a small town is hit by a tornado, or they may be widespread, such as when a hurricane affects several States. Regardless of the scope of a disaster, the affected communities and States often need the assistance of the Federal government when responding to and recovering from the event. This assistance is available under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. §5121, et seq. (hereinafter referred to as the Stafford Act).

Communities are responsible for the protection of their residents, and local emergency response forces will always be the first line of defense when a disaster strikes. The intent of the Stafford

¹ For purposes of this document, the term “State” refers to the Grantee. Grantees include the States, the District of Columbia, U.S. territories, and insular areas; and can include Indian tribes and Alaskan Native tribal governments.

Act is that Federal assistance be supplemental to local and State efforts aided by private relief organizations. Nevertheless, it is not necessary for the community to exhaust its resources before it requests Federal assistance.

When a disaster occurs and a locality has responded to the best of its ability and is, or will be, overwhelmed by the magnitude of the damage, the community turns to the State for help. The Governor, after examining the situation, may direct that the State's emergency plan be executed, direct the use of State police or the National Guard, or commit other resources, as appropriate to the situation. If it is evident that the situation is or will be beyond the combined capabilities of the local and State resources, the Governor may request that the President declare, under the authority of the Stafford Act, that an emergency or major disaster exists in the State.

While this request is being processed, local and State government officials should not delay in taking the necessary response and recovery actions. Such actions should not be dependent upon whether there will be Federal assistance. A list of actions that local officials may want to follow in disaster situations is attached as Appendix A.

Declaration Process

The request for a declaration must come from the Governor or Acting Governor. Before sending a formal request letter to the President, the Governor should request that FEMA conduct a joint Preliminary Damage Assessment (PDA) with the State to verify damage and estimate the amount of supplemental assistance that will be needed. After this assessment is complete, if the Governor believes that Federal assistance is necessary, the Governor sends the request letter to the President, directed through the Regional Director (RD) of the appropriate FEMA region. The

request is reviewed by the RD and forwarded with a recommendation to the Director of FEMA who, in turn, makes a recommendation to the President. The President makes the decision whether to declare a major disaster or emergency. After the initial declaration, the person designated by the Governor as the Governor's Authorized Representative (GAR) may make requests for additional areas to be eligible for assistance or for additional types of assistance as deemed necessary.

After a declaration is made, FEMA will designate the area eligible for assistance and the types of assistance available. With the declaration, a Federal Coordinating Officer (FCO) is appointed. The FCO is responsible for coordinating all Federal disaster assistance programs administered by FEMA, other Federal departments and agencies, and voluntary organizations. At the same time, the RD or one of his or her staff will be appointed as the Disaster Recovery Manager (DRM). The DRM is responsible for managing the FEMA assistance programs. These two titles (FCO and DRM) are most often held by the same person. The Governor may appoint a State Coordinating Officer as the FCO's counterpart. The State Coordinating Officer and the GAR are generally the same person.

FEMA also establishes a Disaster Field Office (DFO) in or near the disaster area. This office is used by Federal and State staff and is the focal point of disaster recovery operations. FEMA and the State manage the implementation of the PA Program from the DFO.

The PA Program

Under the PA Program, which is authorized by the Stafford Act, FEMA awards grants to assist State and local governments and certain Private Nonprofit (PNP) entities with the response to and recovery from disasters. Specifically, the program provides

assistance for debris removal, implementation of emergency protective measures, and permanent restoration of infrastructure. The program also encourages protection from future damage by providing assistance for hazard mitigation measures during the recovery process. The Federal share of these expenses cannot be less than 75 percent of eligible costs.

The PA Program is based on a partnership between FEMA, State, and local officials. FEMA is responsible for managing the program, approving grants, and providing technical assistance to the State and applicants. The State educates potential applicants, works with FEMA to manage the program, and is responsible for implementing and monitoring the grants awarded under the program. Local officials are responsible for identifying damage, providing information necessary for FEMA to approve grants, and managing the projects funded under the PA Program.

The PA Program is managed at the DFO by the Public Assistance Officer (PAO). As the program manager, the PAO advises the FCO on all PA Program matters; manages the operation of PA Program staff and any coordination between the PA Program and other arms of the Federal disaster recovery effort; works with State counterparts; and ensures that the PA Program is operating in compliance with all laws, regulations, and policies.

The PA Program staff consists of field personnel who assist the applicant during the recovery process. These staff members include Public Assistance Coordinators (PACs), Project Officers, and Specialists. The duties of each are described below.

Public Assistance Coordinator. At the beginning of the disaster recovery process, a PAC is assigned to each applicant. The PAC is a customer service manager who works with the applicant to resolve disaster-related needs and ensure that the applicant's projects are processed as efficiently and expeditiously as possible. By being involved from the declaration to the obligation of funds, the PAC ensures continuity of service

throughout the delivery of the PA Program. A PAC generally has responsibility for more than one applicant. The PAC's specific responsibilities are described in more detail in Chapter 3.

Project Officers and Specialists. Project Officers and Specialists are resources for the applicant. Typically, Project Officers are responsible for assisting applicants with the development of projects and cost estimates. While a Project Officer is generally knowledgeable with regard to the PA Program, a Specialist usually has a defined area of expertise that a Project Officer may call upon in the development of a specific project. Specialists assigned to a DFO may have experience in such areas as roads and bridges, utility infrastructure, debris removal and disposal, environmental and historic compliance, insurance, and cost estimating. The Project Officer's and Specialist's specific responsibilities are described in more detail in Chapter 3.

State personnel may also be assigned to work with FEMA staff and with local officials involved with response and recovery efforts.

Once the DFO is established and appropriate FEMA and State personnel are deployed, applicants can begin the process of requesting and receiving public assistance. The remainder of this guide:

- outlines the eligibility requirements of the PA Program, including a detailed discussion of the applicants, facilities, types of work, and costs that are eligible for assistance under the PA Program (Chapter 2);
- describes the process of applying for public assistance, including a discussion of the project formulation process and the Federal, State, and applicant roles and responsibilities in development of projects, scopes of work, and cost estimates (Chapter 3);

- identifies the floodplain management issues, insurance requirements, hazard mitigation opportunities, environmental concerns, and historical preservation issues that affect program processing and funding (Chapter 4); and
- discusses project management operations (Chapter 5).

CHAPTER 2

ELIGIBILITY

Governing Documents

The PA Program is based on a hierarchy of statute, regulations, and policies. The statute is the underlying action that authorizes the program. From the statute, regulations are created to outline program operations, and policies are written to apply the statute and regulations to specific situations. These documents govern the eligibility criteria through which FEMA provides funds for public assistance.

Additional laws, Executive Orders, and regulations that affect the administration of the PA Program are described in Chapter 4.

Statute

Statutes are laws passed by the U.S. Congress and signed by the President. They cannot be changed by FEMA or any other government agency. The law that authorizes the PA Program is the Stafford Act. The basic provisions outlined in the Stafford Act:

- give FEMA the authority to administer Federal disaster assistance;
- define the extent of coverage and eligibility criteria of the major disaster assistance programs;
- authorize grants to the States; and
- define the minimum Federal cost-sharing levels.

The Stafford Act is included in Appendix B for your reference.

Regulations

Regulations are rules designed to implement a statute based on an agency's interpretation of that statute. Such rules provide procedural requirements for program operations. Typically, they

are published through an official process that allows for public comment. Regulations have the same effect as law and must be complied with once they are published in final form. The regulations are published in 44 CFR (Code of Federal Regulations) Part 206. They govern the PA Program and outline program procedures, eligibility, and funding.

The provisions of 44 CFR Part 206, Subparts C and G – L are included in Appendix C for your reference.

Additional regulations regarding grant administration and allowable costs can be found in 44 CFR Part 13 – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Policies

Policies are issued by FEMA Headquarters. They clarify or provide direction for specific situations within the parameters established by the Stafford Act and various regulations that pertain to the PA Program. Policies may be subject-specific (for example, applying eligibility criteria to landslides) or specific to a single disaster. FEMA issues policies so that the regulations are interpreted consistently across the nation and from disaster to disaster.

Policies can be obtained through the following sources:

- the Public Assistance Officer (PAO), who provides the most recent policies pertinent to a specific disaster;
- the *Public Assistance Policy Digest*, (FEMA 321), October 1998; and
- FEMA's website (go to www.fema.gov/r-n-r/pa/policy.htm).

The remainder of this chapter discusses the basic eligibility criteria for public assistance funding, as outlined in the governing documents. These criteria are presented in terms of the following four components:

- applicant;
- facility;
- work; and
- cost.

Each of these components is defined, and detailed explanations of specific conditions and circumstances that may affect the eligibility of each are provided. The division of work into seven categories (A through G) that describe specific types of work is also presented.

Applicant

Following a disaster declaration by the President and a designation for public assistance by FEMA, assistance for response and recovery operations is made available to eligible applicants. Four types of entities are eligible applicants. These entities include:

- State government agencies, such as departments of transportation, environment, or parks;
- Local governments, such as a county, city, town, special district or regional authority, village, or borough;
- Indian Tribes or authorized tribal organizations and Alaskan Native villages; or
- Private Nonprofit (PNP) organizations or institutions that own or operate facilities that provide certain services otherwise performed by a government agency.

Facilities owned by public entities also may be eligible. Public entities are those organizations that are formed for a public purpose but are not political subdivisions of a State or a local government. To qualify for assistance, these types of applicants must receive the majority of their funding from the State or a political subdivision of the State. Application for public assistance, as with assistance for facilities that serve rural or unincorporated communities (see page 17), must be made by a State or a political subdivision of the State that will be responsible for the completion of work at the facility.

PNP Organizations

PNP organizations must have an effective ruling letter from the U.S. Internal Revenue Service granting tax exemption or certification from the State that the organization is a non-revenue producing, nonprofit entity organized or doing business under State law.

PNP services must be available to the general public. This means that the primary purpose of a PNP must be to provide a public service that is not restricted by a specific definition or by prohibitive fees. If access to the use of PNP services is restricted, the PNP is not eligible. Examples of ineligible PNPs are those restricted to:

- a certain number of members;
- members that have a financial interest in the facility, such as a condominium association; or
- a geographical area smaller than normal for the type of service being provided.

Membership requirements or restrictions on services that do not disqualify PNPs for public assistance include:

- fees that cover only administrative processing costs;
- fees that can be waived upon demonstration of need; or

- restriction to a group of users where at least one parameter is open ended, such as all youth under age 16.

In order to be eligible for public assistance, PNP facilities must be used primarily for an eligible purpose. Qualifying PNPs include those that provide education, medical, custodial care, emergency, utility, and other essential governmental services. These services are described below.

PNP Education. Educational institutions are defined in terms of primary, secondary, and higher education schools. For primary and secondary schools, an educational institution is a day or residential school that provides primary and secondary education as determined under State law. This generally means that the school satisfies State requirements for compulsory attendance. For higher education facilities, an educational institution is defined as an institution in any State that:

- admits as students persons having a high school diploma or equivalent;
- is legally authorized to provide education beyond the secondary level;
- awards a bachelor's degree or a two-year degree that is acceptable as full credit towards a bachelor's degree; and
- is accredited by a nationally recognized agency or association. (Special criteria apply to institutions that are not accredited. The PAO should be consulted.)

A higher educational institution is also defined as any school that provides not less than a one-year training program to prepare students for gainful employment in a recognized occupation and that meets the provisions of the criteria set forth in the first, second, and fourth bullets above.

Eligible facilities include classrooms plus related supplies, equipment, machinery, and utilities of an educational institution

necessary or appropriate for instructional, administrative, and support services. It does not include buildings, structures, or related items used primarily for religious purposes or instruction.

PNP Medical. A medical facility is any hospital, outpatient facility, rehabilitation facility, or facility for long-term care, as defined below. A medical facility is also any facility similar to those listed below that offers diagnosis or treatment of mental or physical injury or disease. Eligible components include the administrative and support facilities essential to the operation of the medical facility, even if not contiguous.

Hospitals include general, tuberculosis, and other types of hospitals and related facilities, such as laboratories, outpatient departments, nursing home facilities, extended care facilities, facilities related to programs for home health services, self-care units, and central service facilities operated in connection with hospitals. This category also includes education or training facilities for health profession personnel operated as an integral part of a hospital. A hospital that primarily furnishes home-based care is not considered a hospital under this definition.

Outpatient facilities are defined as facilities located in or apart from a hospital for the diagnosis or treatment of ambulatory patients. Such a facility may be one operated in connection with a hospital, or one in which patient care is under the professional supervision of a doctor licensed in the State.

Rehabilitation facilities are defined as facilities that are operated for the purpose of assisting the rehabilitation of disabled persons through a program of medical evaluation and services; and psychological, social, or vocational evaluation and services that are under competent professional supervision. The major portion of these services should be furnished in the facility.

Facilities for long-term care are defined as facilities providing inpatient care for convalescent or chronic disease patients who require skilled nursing care and related medical services. Such facilities may be in a hospital, operated in connection with a hospital, or be in a location where services performed are under the supervision of a doctor licensed in the State.

Medical office buildings that are owned by PNP organizations but contain offices leased to for-profit practices of doctors and other services are subject to special eligibility criteria. If the for-profit practices lease more than 50 percent of the building, the building is not eligible for public assistance. However, if at least 50 percent of the building is used for medical service activities associated with the PNP organization, the building is eligible for assistance. Such assistance is pro-rated based on the percentage of the building occupied by the PNP organization. For example:

A medical office building is damaged during a declared event, and the restoration costs are estimated to be \$100,000. If 60 percent of the floor space in the building is used by a PNP organization and the other 40 percent is used by a for-profit practice, the maximum eligible amount of public assistance would be \$60,000.

PNP Custodial Care. Custodial care facilities are those buildings, structures, or systems, including those essential administration and support buildings, that are used to provide institutional care for persons who do not require day-to-day care by doctors or by other professionals, but do require close supervision and some physical constraints on their daily activities.

PNP Emergency. Emergency facilities include fire departments, search and rescue teams, and ambulances. Buildings, vehicles, and other equipment used directly in performing emergency services are eligible.

PNP Utility. A utility includes facilities necessary for the generation, transmission, distribution, and maintenance of electric

power, telephone, sewer and water, and gas services. PNP irrigation organizations are not treated as utilities. FEMA Program Officials can provide further information on the basis for eligibility of certain of their functions.

PNP Other. Essential governmental services not falling in one of the categories described above include:

- museums;
- zoos;
- community centers;
- libraries;
- homeless shelters;
- senior citizen centers;
- shelter workshops; and
- health and safety services.

Facilities that provide health and safety services of a governmental nature include:

- low-income housing;
- alcohol and drug rehabilitation centers;
- residences and other facilities offering programs for battered spouses;
- facility offering food programs for the needy; and
- daycare centers for children, senior citizens and those individuals with special needs (such as those with Alzheimer's disease, autism, and muscular dystrophy).

Community centers that are established and primarily used as gathering places for a variety of social, educational enhancement, and community service activities also may be eligible. However, facilities established or primarily used for religious, political,

athletic, recreational, vocational or academic training, artistic, conference, or similar activities are not eligible. A community center includes the building and associated structures and grounds. Each component must be evaluated in its entirety to determine eligibility. For example:

If a community center complex consists of three buildings, two that serve as eligible community centers and one that serves as an administrative building, only two buildings are eligible for public assistance, as the administrative building does not provide an eligible activity.

“Primarily used”, as stated above, means that the facility is used over 50 percent of the time for eligible activities, or 50 percent of its space is used for eligible activities.

Examples of ineligible services or facilities are:

- recreational facilities;
- job counseling or job training;
- facilities for advocacy groups not directly providing health services;
- conference facilities;
- centers for the performing arts;
- political education;
- advocacy or lobbying;
- religious service or education;
- facilities for social events; and
- roads owned and operated by a property owners association.

Refer to page 32 for a discussion of additional limitations for PNPs.

Facility

A facility is defined as:

- any publicly or PNP-owned building, works, system, or equipment; or
- certain improved and maintained natural features.

The improvement of a natural feature should be based on a documented design that changes and improves the natural characteristics of the feature. Examples of such improvements include soil stabilization measures (such as terracing), channel realignment, and channel bank armoring for erosion control. The non-structural portions of public golf courses may be considered facilities.

Examples of improvements that do not qualify as eligible facilities include agricultural lands and planted trees and shrubs.

Upon completion of an improvement, a subsequent measurable difference in the performance over the unimproved natural feature should be shown. The maintenance of this improvement must be done on a regular schedule and to standards to ensure that the improvement performs as designed. It is the improvement itself that must be maintained for the natural feature to be considered a facility.

Legal Responsibility

An eligible applicant must be legally responsible for the damaged facility at the time of the disaster. Ownership of a facility is generally sufficient to establish responsibility. If an applicant owns but leases out an eligible facility, repairs to the facility are eligible, unless the lease states that the lessee is responsible for extraordinary repairs. However, if an applicant leases a facility as a tenant, repairs to that facility are not eligible, unless the lease

specifically states that the lessee is responsible for the repairs. Facilities owned by Federal agencies typically are not eligible for public assistance. Some Federal agencies, however, own facilities but turn responsibility for operation and maintenance of these facilities over to local agencies. These may be eligible facilities. Examples include roads constructed by the U.S. Forest Service and the Bureau of Indian Affairs, and reservoirs and water delivery systems constructed by the U.S. Bureau of Reclamation.

Often, citizens in rural or unincorporated communities will band together for the purpose of maintaining common facilities. Because such facilities serve the community, they may be eligible for public assistance, even though they are not owned by an eligible applicant, if a State or political subdivision of the State submits the request for assistance. The original purpose of the facility must have been for use by the general public and not for private or commercial uses. The facilities must be owned by a legal entity in order to be eligible.

Other Federal Agencies

For certain types of facilities, disaster assistance is the responsibility of a Federal agency other than FEMA. Public assistance is not available for the permanent repair of such facilities and is limited in nature to emergency work. When a request is made for public assistance for a facility whose repair FEMA considers to be within the authority of another Federal agency, the specific Federal agency with responsibility will be asked to review the request and advise FEMA whether the work is eligible under that agency's authority. If the work falls outside the statutory authority of that agency, FEMA may consider providing assistance for the work under the Stafford Act. However, the other Federal agency may determine the work is not eligible for assistance because:

- the agency does not have funds for the particular program at the time; or

- the work is the responsibility of the applicant either by statute or by agreement with the agency.

If either of the above reasons apply, public assistance will not be available because the work is within the authority of the other agency and the eligibility was determined under that agency's regulations.

FEMA assistance generally is not available if another agency's program can reimburse an applicant for work done by that applicant. However, since some agencies must perform the work or let a contract for the work themselves (and are not authorized to reimburse an applicant), an applicant may find that the work it did cannot be reimbursed. Denial of payment by itself is not a basis for requesting public assistance from FEMA. However, if there is an emergency need, FEMA may consider assistance for emergency work that has been done or paid for by the applicant. If the work is not emergency work, it is not eligible for public assistance.

Federal agencies that often have authority to provide disaster assistance are discussed below.

U.S. Army Corps of Engineers (USACE). The USACE has a continuing authority to conduct emergency repair and permanent restoration of damaged flood control works. Flood control works are those facilities constructed for the purpose of eliminating or reducing the threat of flooding. Examples include:

- levees;
- floodwalls;
- flood control channels; and
- dams designed for flood control.

Because permanent restoration of these facilities falls under the authority of the USACE, public assistance funding is not available.

This restriction applies even if USACE funding is denied. However, public assistance funding may be provided for certain emergency measures to include debris removal and flood fighting.

Emergency repair also may be eligible if, at the time of the disaster, the facility is not enrolled in the USACE program and the facility has not previously received FEMA assistance for emergency repairs. A condition of funding will be that the applicant enrolls the subject facility in the program; otherwise, funding for the repair and restoration of the facility will not be provided in subsequent disasters. If the facility is already enrolled in the USACE program at the time of the disaster, or has received emergency repair assistance from FEMA previously, public assistance is not available for emergency repair.

The USACE also has the authority to construct and repair facilities that protect the shorelines of the United States. The USACE repair authority extends only to federally constructed shoreline works. It does not extend to locally owned facilities. Therefore, federally constructed facilities are not eligible for public assistance funding, but locally owned facilities may be considered.

Department of Agriculture – Natural Resources Conservation Service (NRCS).

Under the Emergency Watershed Protection Program, the NRCS has authority for the repair of flood control works that is similar to that of the USACE. Because of these overlapping authorities, the two agencies have a memorandum of understanding that provides guidance in dividing responsibilities when a disaster occurs. The NRCS authority applies to drainage basins of 400 square miles or less.

Federal Highway Administration (FHWA). The FHWA administers the Emergency Relief (ER) Program to assist State and local governments with the repair of roads and bridges damaged during disasters. Funds from this program are used for facilities on routes identified by the FHWA. They include most public roads functionally classified as arterial and collector routes.

The ER Program is the responsibility of the Secretary of Transportation and is activated independently of major disaster and emergency declarations made by the President. Frequently, the ER Program is not activated when the President declares a major disaster or emergency. ER funds are used for both emergency and permanent work and are granted on the basis of inspections performed by FHWA and State highway department personnel.

Because restoration of certain facilities falls under the authority of FHWA, the Stafford Act specifically excludes permanent restoration of them under the PA Program. As a result, public assistance for the permanent repair of these facilities is not available, even if the ER Program is not activated. Therefore, there will be times when no assistance is available for the permanent repair of some facilities. FEMA may assist with limited emergency repairs and debris clearance for emergency access on a case-by-case basis, when ER funds are not available for that work.

There are certain roads on Indian reservations that have been designated by the Bureau of Indian Affairs as falling under the authority of the FHWA. These roads are subject to the restrictions discussed above. It may be necessary to consult the Bureau of Indian Affairs to determine repair responsibility of damaged roads on reservations.

Active Use

A facility must be in active use at the time of the disaster. Inactive facilities typically are not eligible. Exceptions to this requirement occur when:

- the facility was only temporarily inoperative for repairs or remodeling;
- the facility was temporarily unoccupied between tenants;

- future use by the applicant was firmly established in an approved budget; or
- the applicant can clearly demonstrate to FEMA that there was an intent to begin use within a reasonable amount of time.

This requirement is also applied to a facility that is partially occupied and partially vacant at the time of a disaster. Vacant portions would not be eligible unless the exemptions noted above apply. In all cases, the facility in question must have been eligible for assistance during the time it was in use. Assistance will be pro-rated according to the percentage of the facility that was in active use for an eligible purpose.

Alternate Use

If a facility is being used for purposes other than those for which it was originally designed, the eligible restoration for that facility is limited to the extent necessary to restore the immediate pre-disaster use of the facility, but not to a greater capacity than originally designed. For example:

If an office building is being used as a storage facility at the time of a disaster, only those repairs that may be needed to restore a storage facility are eligible. Any special lighting or wall and floor finishes that are typical of an office building would not be necessary for a storage facility and, therefore, would not be eligible.

In the case of PNP facilities, the primary purpose for the establishment of the facility is important for the eligibility determination. For example:

A facility established as a church (an ineligible purpose) might be used on occasion as a homeless shelter, while its primary purpose remained as a church. It would be ineligible based on the primary or majority use.

Facilities Under Construction or Scheduled for Replacement

Typically, a facility under construction is the responsibility of the contractor until the owner has accepted the work as complete. Because a contractor is not an eligible applicant, the portion of the facility under the contractor's responsibility is not eligible for public assistance. In the event of damage to a facility under construction, FEMA must determine if the applicant is responsible for repairs before granting assistance. Repairs are eligible if the contract under which the work is being performed places responsibility for damage on the applicant during the construction period. Repairs are also eligible if, prior to the disaster, the applicant had accepted the work and had, therefore, assumed responsibility. If the applicant had accepted responsibility for a portion of the site, repairs to only that portion of the site would be eligible.

When a facility or portion of that facility is under contract for replacement using non-Federal funds, damage to the portion of the facility being replaced is not eligible. This restriction in funding applies even if the work has not started at the time of the disaster. However, if an applicant had included a project in a budget but had not yet let a contract at the time of the disaster, that project is eligible.

If a facility has been scheduled for replacement using Federal funds and work is scheduled to begin within 12 months of the time the disaster strikes, the facility is not eligible for funding. An example of a continuing program of this nature is the FHWA Bridge Replacement and Rehabilitation Program. The program provides for State or locally owned bridges to be replaced with FHWA assistance. The State sets priorities for this program and determines which bridges will be replaced. If a disaster damages or destroys a bridge scheduled for replacement, the State should be able to reschedule so that the damaged bridge can be replaced immediately rather than later in the year.

Work

There are three general types of work that may be eligible, with different criteria for each:

- debris removal;
- emergency protective measures; and
- permanent restoration.

Debris removal and emergency protective measures are considered emergency work, and permanent restoration is considered permanent work. Emergency and permanent work are discussed in the latter part of this chapter. Three general criteria apply to all types of work and to all applicants. These criteria are discussed below.

Direct Result. Work must be required as a direct result of the declared disaster. The declaration by the President will designate the event, such as severe storms, tornadoes, or floods, for which the declaration is being made. Damage that results from a cause other than the designated event, or from pre-disaster damage, is not eligible.

FEMA establishes an incident period after consultation with the GAR. The incident period is the time span during which the disaster-causing incident occurs. This period varies in length, depending on the type of incident. For example:

The incident period for a flood event could be several weeks, because the water has to crest and recede; while the incident period for a tornado would be one day, because the damage occurs in a matter of minutes.

Damage that occurs during the incident period, or damage that is the direct result of events that occurred during the incident period, is eligible. Protective measures and other preparation activities performed within a reasonable and justified time in advance of the event also may be eligible. For example, if a flood on a major river is forecast a few weeks in advance, sandbagging and construction of temporary levees to protect the community may be eligible.

Protective measures addressing eligible damage may be performed after the incident period. Damage that occurs after the close of an incident period that can be tied directly to the declared event also may be eligible. Such damage may occur even a few months after the event and still be considered. For example:

An eligible public building is damaged during a declared earthquake. After the incident period closes, a wing of the building collapses due to structural failures that were caused by the earthquake. Replacement of the collapsed wing may be eligible for public assistance.

Designated Disaster Area. When a declaration of a major disaster is made for a State, FEMA will designate those counties of the State that are eligible for assistance. Except for unusual situations, counties or independent cities are designated. The damaged facility must be located, or the work must be performed, within the designated area to be eligible for public assistance.

If the damaged facility is located within the designated area but the owner of the facility is from an undesignated area, the damaged facility will still be eligible and that owner may apply for assistance. However, if an owner from within the designated area has a damaged facility located outside the designated area, that facility will not be eligible, even if damaged by the same event.

The types of assistance available in the designated disaster area may vary between counties. Some counties may be eligible for reimbursement for both emergency and permanent work while others may be eligible to receive funding for emergency work only.

Legal Responsibility. As with eligible facilities (see page 16), work must be the legal responsibility of the applicant at the time of the disaster to be eligible. Ownership of a facility is sufficient to establish the responsibility for work to repair the facility. However, if an applicant leases a facility as a tenant, repairs to that facility are not eligible unless the lease states that the lessee is responsible for the repairs. A copy of the lease agreement should be provided to FEMA to determine responsibility. The lease usually contains general repair and maintenance language; however, responsibility for damage resulting from a disaster may not be established. In the absence of any mention in the lease, the owner of the facility will be assumed to be responsible for the repair.

In some cases, State or local governments use mutual aid agreements as an emergency preparedness device. A mutual aid agreement is an agreement between jurisdictions or agencies to provide services across boundaries in an emergency. The conditions of the agreement can be to provide reciprocal services or direct payment for services. FEMA will reimburse mutual aid costs for eligible work, when requested by the applicant under the following conditions:

- the agreement is written and in effect prior to the disaster;
- the entity that received the aid was actually charged for that aid;
- the agreement does not contain a contingency clause that specifies payment only upon receipt of FEMA funds; and
- the entity can provide documentation of payment for services upon request.

Negligence

Damage caused by negligence on the part of the applicant is not eligible. This issue often arises when an applicant fails to take prudent measures to protect a facility from further damage in the wake of a disaster. For example:

The roof of a library is damaged during a hurricane, but the applicant does not install tarps on the roof to protect the building's interior for several weeks. Repeated rain showers during that time destroy the exposed books and furnishings. The damage caused by the rains would not be eligible unless the applicant could document and justify why emergency protective measures were not implemented in a timely manner.

Damage caused by an applicant's actions, if unavoidable, may not necessarily be negligence, especially in cases where the damage occurs during emergency response efforts. For example:

While using heavy equipment to build a temporary berm for emergency flood protection, an applicant damages the roads that provide access to the site. Even though the applicant caused the damage, the repairs to the roads may be eligible.

Also note that damage caused by inadequate design is not considered negligence. For example:

If an undersized culvert contributes to damage to a road, the repair of the road may be eligible.

Maintenance

Normal maintenance, such as pothole repair, routine pulling of ditches, and minor gravel replacement; and deferred maintenance, such as replacing rotted timber, and repairing deteriorated asphalt

and leaking roofs, are not eligible because they are not a direct result of a disaster. For example:

If a culvert's annual maintenance report indicates that the culvert was full of debris (tree limbs and sediment) before the disaster, the work to remove the obstructions from the culvert would not be eligible.

In instances where damage can be attributed to the disaster instead of lack of maintenance, repairs are eligible. It is the applicant's responsibility to show that the damage is disaster related.

Codes and Standards

When a facility must be repaired or replaced, FEMA may pay for upgrades that are necessary to meet specific requirements of current codes and standards. This situation typically occurs when older facilities, particularly buildings, must be repaired in accordance with codes and standards that were adopted after the original construction. These codes and standards may include Federal requirements, such as those mandated by Executive Order 12699 (seismic requirements for new buildings). However, this does not mean that public assistance grant funds will be provided to bring a facility into full compliance with current codes and standards. The determination of which codes and standards are applicable to the work is very important in determining eligible work. For an upgrade to be eligible, the code or standard requiring the upgrade must meet the five criteria listed below.

1. *The code or standard must apply to the repair work being performed.* If a facility must be replaced, an upgrade would apply throughout the facility. However, if a facility needs repair work only, upgrades would apply to the damaged elements only. For example:

FEMA would pay to install a sprinkler system throughout a multi-story building if that building were being replaced, but

would not pay for such a system if the only eligible repair work involved replacing flood-damaged walls and flooring on the ground level.

2. *The code or standard must be appropriate to the pre-disaster use of the facility.* For example, if a former classroom facility that was being used by a school district as a warehouse before the disaster is destroyed, standards applicable to the design and construction of classrooms do not apply; only those for warehouses would be eligible.
3. *The code or standard must be reasonable, formally adopted in writing, and implemented prior to the disaster declaration date.* The appropriate legislative authority within the applicable jurisdiction must have taken all requisite actions to implement the code or standard.
4. *The code or standard must apply uniformly to all facilities of the type being repaired within the applicant's jurisdiction.* The code or standard cannot allow selective application; it cannot be subject to discretionary enforcement by public officials; it must be applied regardless of the source of funding for the upgrade work; and it cannot be applied selectively based on the availability of funds.
5. *The code or standard must have been enforced during the time that it was in effect.* FEMA may require documentation showing prior application of the standard.

Repair vs. Replacement (50 Percent Rule)

FEMA will restore an eligible facility to its pre-disaster design. Restoration is divided into two categories: repair or replacement. If a facility is damaged to the point where the applicant thinks the facility should be replaced rather than repaired, the following

calculation, known as the “50 Percent Rule”, should be used to determine whether replacement is eligible:

IF $\frac{\text{Repair Cost}}{\text{Replacement Cost}} < 50\%$ THEN only the repair cost is eligible

IF $\frac{\text{Repair Cost}}{\text{Replacement Cost}} \geq 50\%$ THEN the replacement cost is eligible

Repair Cost includes only those repairs associated with the damaged components. This cost does not include upgrades triggered by codes and standards, demolition, site work, or applicable project management costs, even though such costs may be eligible for public assistance.

Replacement Cost includes the costs for all work necessary to provide a new facility of the same size or design capacity and function as the damaged facility in accordance with current codes and standards. The replacement cost does not include demolition, site work, and applicable project management costs, even though these costs may be eligible for public assistance.

Note that the design capacity of the facility, either as originally designed or as modified by later design, will govern the extent of eligible work when a facility is being replaced. If a facility was being used in excess of its design capacity, that factor would not increase the eligible capacity of a replacement facility.

The table on page 30 illustrates eligible cost determinations. In most cases, the criteria outlined in this table are adequate for repair and replacement projects. However, particular attention should be paid to the repair of damaged historic buildings. Such repair could trigger a requirement to upgrade a structure to new construction standards, while at the same time maintaining historic features. The total restoration cost, which would include the

Conditions	Eligible Costs
1. The repair cost* does not exceed 50% of the replacement cost** and no upgrades are triggered.	Repair of eligible damage only.
2. The repair cost* does not exceed 50% of the replacement cost** and whole building upgrade is triggered and the total of the two items is greater than 50% but less than 100% of replacement cost.**	Repair of eligible damage plus upgrade cost.
3. The repair cost* does not exceed 50% of the replacement cost** and whole building upgrade is triggered and the total of the two items is estimated to be greater than 100% of replacement cost.**	Repair of eligible damage plus upgrade cost, but the total eligible costs capped at the replacement cost.
4. The repair cost* exceeds 50% of replacement cost.**	The building's full replacement cost (but no more than its replacement cost) is eligible.

Notes: **“Repair cost”* in these examples includes repair of damaged components only, as described on page 29.

****“Replacement cost”* is replacement of the same size or designed capacity and function of the building to all applicable codes, as described on page 29.

triggered upgrades in this situation, may exceed replacement cost, as in condition 3 in the table.

The regulations contain an exception to the funding limitation described in the table that applies only in a very narrow range of situations. Such a situation would exist when there is a standard that requires a facility to be restored in a certain manner and disallows other options, such as leaving the facility unrestored. If an applicable standard requires such action, the eligible cost to complete the restoration may exceed the replacement cost.

Temporary Relocation

When buildings that house essential services, such as school classrooms, police and fire department facilities, government offices, and certain PNP functions, such as critical health facilities, are damaged extensively enough that they cannot be used until repairs are made, temporary relocation of the essential services may be necessary. The costs associated with temporary relocation are eligible but are subject to cost comparisons of alternate methods of providing facilities. Such costs include the rental or purchase of temporary space and equipment. Maintenance and operating costs of the temporary facility are not eligible.

The length of time that rental costs are eligible will be based on the time estimated to complete repair work that will bring the damaged facility to pre-disaster design. The decision whether to rent or purchase space and equipment must be based on cost effectiveness.

Permanent Relocation

An applicable Federal, State, or local standard, such as a floodplain management regulation, may require that a damaged facility be relocated away from a hazardous area. Such relocations also may be required by FEMA if the facility is subject to repetitive heavy damage because of its location. In either case,

FEMA will provide assistance for the relocation project only if it is cost effective and not barred by any other FEMA regulations or policies. Eligible costs included in a relocation project are:

- demolition and removal of the old facility;
- land acquisition;
- construction of the new facility, including any elements required for environmental and historic compliance; and
- construction of ancillary facilities, such as roads and utilities.

To determine cost effectiveness, benefits are measured in terms of the damage prevented by moving away from the hazardous location. Generally, the project will only be cost effective if the damage is severe enough that the facility qualifies for replacement.

When a relocation to outside a hazard area is approved, no future public assistance funding for the repair or replacement of any facility subsequently built at the old site will be approved. An exception is given for facilities or structures that facilitate an open space use. Examples include minimal facilities for a park, such as benches, tables, restrooms, and minor gravel roads. When such a restriction is placed on a site, the applicant will be notified in writing of the limitation by the DRM.

If relocation is not desired, feasible or cost effective, and restoration in the original location is not a practicable alternative because of floodplain, environmental, historical, or other Special Considerations, the applicant may request that the funding be applied to an alternate project. Alternate projects are discussed in more detail on page 84 of this guide.

Limitations for PNPs

Assistance for all PNPs is limited to repair or replacement of damaged eligible facilities and related costs, such as protective

measures to prevent damage to the facility or contents. A protective measure might be to move the facility contents to temporary storage. The provision of temporary facilities and moving costs must be evaluated according to the criteria for temporary relocation outlined on page 31 of this guide. The moving costs, as well as necessary alterations at the new location, might be eligible if the continued operation of the facility was necessary to eliminate immediate threats to life or property. If the PNP were located in a rented facility, repairs to the facility would not be eligible unless the written lease placed such responsibility on the PNP. If a PNP must vacate a rental facility while repairs are made, and the PNP is not legally responsible for repairing the facility, the expenses of renting a temporary facility would not be eligible, even if those expenses exceed the pre-disaster rate.

PNP operating costs for providing services are not eligible, even if increased by the disaster event. The ineligible items include labor, material, and equipment costs for providing assistance services to disaster victims, even if the services are not the same as the organization's basic mission. If the organization is providing services under contract to a local government or State agency, the work may be eligible if it is claimed by that government or agency.

Cost

Generally, costs that can be directly tied to the performance of eligible work are eligible. Such costs must be:

- reasonable and necessary to accomplish the work;
- compliant with Federal, State, and local requirements for procurement; and
- reduced by all applicable credits, such as insurance proceeds and salvage values.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In other words, a reasonable cost is a cost that is both fair and equitable for the type of work being performed. For example:

If the going rental rate for a backhoe is \$25/hour, it would not be reasonable to charge \$75/hour for a backhoe.

Determining reasonableness is particularly important when Federal funds are involved. Considerations should be given to whether the cost is of a type generally recognized as ordinary and necessary for the subject facility and type of work and whether the individuals concerned acted with prudence in conducting work. In addition, normal procedures must not be altered because of the potential for reimbursement from Federal funds. Reasonable costs can be established through:

- the use of historical documentation for similar work;
- average costs for similar work in the area;
- published unit costs from national cost estimating databases; and
- FEMA cost codes.

In performing work, applicants must adhere to all Federal, State, and local procurement requirements. Furthermore, an applicant may not receive funding from two sources to repair disaster damage. Such a duplication of benefits is prohibited by the Stafford Act. If an applicant can obtain assistance for a project from a source other than FEMA, including insurance proceeds, then FEMA cannot provide funds for that project. A State disaster assistance program is not considered a duplication of Federal funding. Donated grants from banks, private organizations, trust

funds, and contingency funds must be evaluated individually to determine whether they constitute a duplication of benefits.

The eligible cost criteria referenced above apply to all direct costs, including labor, materials, equipment, and contracts awarded for the performance of eligible work.

Labor

Force account labor is defined as labor performed by the applicant's employees, rather than by a contractor. Force account labor costs associated with the conduct of eligible work may be claimed at an hourly rate. Labor rates include actual wages paid plus fringe benefits paid or credited to personnel. Different eligibility criteria apply to labor rates for different kinds of employees and work, as described below.

Reassigned Employees. The labor cost for employees assigned to perform tasks that are not part of their normal jobs is eligible as long as the reassigned employees are performing eligible permanent work. A reassigned employee may have a higher salary than the personnel normally performing the work. In this case, the eligible labor rate should be the average rate for the employees who normally do that type of work.

Temporary Employees. Temporary employees are extra personnel hired as a direct result of the disaster to perform eligible work. An example of a temporary employee would be a laborer hired to perform repairs to roads damaged during the disaster. All reasonable wages paid to temporary employees who perform eligible emergency and permanent work are eligible.

Force Account Mechanics. Time spent maintaining and repairing applicant-owned equipment is not eligible because this cost is included in equipment rates described on page 37. Repair of disaster damage to equipment may be eligible, as described later in this chapter under Category E.

Foremen and Supervisors. Labor for both foremen and supervisors may be eligible for work forces engaged in disaster-related field activities. However, the salaries of commissioners, mayors, department directors, police and fire chiefs, and other administrators usually are not eligible.

National Guard Labor and Prison Labor. The Stafford Act contains specific reference to costs of National Guard labor and prison labor. Costs of using National Guard personnel to perform eligible work are eligible to the extent that those costs are being paid by the State. Prison labor costs are eligible at the wage rate actually paid. For the labor of guards, transportation, and food, only the incremental extra costs for those items may be claimed.

Davis-Bacon Act. The Davis-Bacon Act requires Federal construction contractors to pay their workers the “prevailing wage” based on the local union wage scale defined by the Department of Labor. The provisions of the Davis-Bacon Act do **not** apply to State or local contracts for work completed using public assistance funds under the Stafford Act. However, the provisions may apply to contracts let by other Federal agencies, such as the USACE. If a State or local government incorporates Davis-Bacon wage rates as part of its normal practice for all contracts, regardless of funding source, then those rates would be eligible.

Regular Time and Overtime. For debris removal and emergency protective measures, only overtime labor is eligible for permanent employees, regardless of normal duties or assignments. Regular time, which is defined by the entity’s established compensation policy, is not eligible for permanent employees. For permanent work, both regular time and overtime are eligible for all employees.

Compensatory Time. If an applicant has a policy for providing compensatory time in place of overtime, FEMA reimbursement will be based on that policy, and reimbursement at premium rates for overtime hours is not eligible. Costs for compensatory time are

eligible at regular rates, but must be part of the official time-keeping system.

Fringe Benefits. Fringe benefits that are actually paid as part of an established policy are eligible. Because certain items in a benefit package are not dependent on hours worked, such as health insurance, the fringe benefit rate will be different for regular and overtime hours. The overtime fringe benefit rate is usually significantly lower.

Materials

The cost of supplies that were purchased or taken from an applicant's stock and used during the performance of eligible work are eligible. If available, actual costs for materials should be taken from invoices. If the materials were taken from stock and invoices are not available, costs may be developed from the applicant's historical data or by contacting area vendors.

Equipment

The incurred cost of force account (that is, applicant-owned) equipment used to perform eligible work is eligible. Costs for use of automobiles and pick-up trucks may be reimbursed on the basis of mileage. For all other types of equipment, costs are reimbursed using an hourly rate. Equipment rates typically include operation, insurance, depreciation, and maintenance; however, they do not include the labor of the operator. Stand-by time for equipment is not eligible. However, if an applicant uses equipment intermittently for the majority of day, use for the entire day may be claimed if adequate documentation is submitted. Equipment that is used for less than half a day is reimbursable only for the hours used.

FEMA recognizes three types of equipment rates. Each is described as follows.

FEMA Rates. FEMA has published a schedule of equipment rates that is applicable on a national basis. If a piece of equipment used by an applicant is not on the FEMA schedule, documentation to justify the requested rate must be submitted to FEMA. If the rate is less than \$75 per hour, the DRM may approve the rate. If it is \$75 per hour or greater, it must be submitted to FEMA's Executive Associate Director (EAD) of Response and Recovery for approval. If an entity has established rates for use in its normal day-to-day operations, the criteria listed below under State and local rates apply. If an entity does not have established rates, FEMA rates will be used.

State Rates. An applicant may claim rates that have been approved under State guidelines up to \$75 per hour. Rates over \$75 per hour may be approved by FEMA on a case-by-case basis. Rates used by a State agency for its own equipment are, by definition, rates established under State guidelines. Care must be taken to examine the rate schedule before applying it to State or locally owned equipment. Some State highway departments have a schedule of rates for "force account" work, the meaning of which is generally different from its meaning in the PA Program. State highway usage of the term may mean a rate for contractor's equipment doing extra work on a project. PA Program usage means a rate for applicant-owned equipment. Therefore, FEMA may request verification that any such rate schedule is actually for applicant-owned equipment.

Local Rates. Rates developed by a local government can be used. Where local rates have been developed, reimbursement is based on the local rates or FEMA's rates, whichever is lower. If the local rate is lower and the applicant certifies that the rates do not reflect all actual costs, the higher FEMA rates may be used. The applicant may be requested to provide documentation of the basis for its rates.

Contracts

Contracts must be of reasonable cost, generally must be competitively bid, and must comply with Federal, State, and local procurement standards. FEMA finds four methods of procurement acceptable. Each is described below.

Small Purchase Procedures. Small purchase procurement is an informal method for securing services or supplies that do not cost more than \$100,000 by obtaining several price quotes from different sources.

Sealed Bids. Sealed bid procurement is a formal method where bids are publicly advertised and solicited, and the contract is awarded to the bidder whose proposal is the lowest in price (this method is the preferred method for procuring construction contracts).

Competitive Proposals. Competitive procurement is a method similar to sealed bid procurement in which contracts are awarded on the basis of contractor qualifications instead of on price (this method is used for procuring architectural or engineering professional services).

Noncompetitive Proposals. Noncompetitive procurement is a method whereby a proposal is received from only one source. Noncompetitive proposals should be used only when the award of a contract is not feasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies:

- the item is available only from a single source;
- there is an emergency requirement that will not permit a delay;
- FEMA authorizes noncompetitive proposals; or
- solicitation from a number of sources has been attempted, and competition is determined to be inadequate.

FEMA provides reimbursement for three types of contracts. They are:

- lump sum contracts for work within a prescribed boundary with a clearly defined scope and a total price;
- unit price contracts for work done on an item-by-item basis with cost determined per unit; and
- cost plus fixed fee contracts, which are either lump sum or unit price contracts with a fixed contractor fee added into the price.

Time and materials contracts should be avoided, but may be allowed for work that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed. Applicants must carefully monitor and document contractor expenses, and a cost ceiling or “not to exceed” provision must be included in the contract. If a time and materials contract has been used, the applicant should contact the State to ensure proper guidelines are followed. Cost plus a percentage of cost contracts and contracts contingent on FEMA reimbursement are not eligible.

Donated Resources

Volunteer labor, donated equipment, and donated materials are eligible to offset the non-Federal portion of the cost for emergency work. The amount of credit that can be applied to a project is capped at the non-Federal share so that the Federal share will not exceed the applicant’s actual out-of-pocket costs. Any excess credit can be applied to other emergency work projects of the applicant.

Donated resources must apply to actual emergency work, such as debris removal or the filling and placing of sandbags. The donated services must be documented and must include a record of hours worked, the work site, and a description of work.

Volunteer labor will be valued at the same hourly labor rate as someone in the applicant's organization performing similar work. If the applicant does not have employees performing similar work, the rate should be consistent with that for a person ordinarily performing the work in the same labor market.

The value for donated equipment should be determined by using the applicable FEMA equipment rate and multiplying it by the number of hours the piece of equipment was used performing eligible work.

Donated materials are valued at the current commercial rate. If the materials were donated by a Federal agency, such as sandbags donated by the USACE, the value of the materials cannot be applied as volunteer credit.

Administrative Allowance

Federal regulations for grant programs allow the grant recipients to claim reasonable administrative costs, unless the law authorizing a grant program includes specific provisions for these costs. For the PA Program, the Stafford Act stipulates that each grant recipient be provided an allowance to meet the cost of administering the grant. The allowance is calculated differently for applicants and States and covers different costs for each.

Applicants. The Administrative Allowance for applicants covers direct and indirect costs incurred in requesting, obtaining, and administering public assistance. No other administrative or indirect costs incurred by an applicant are eligible.

Examples of the activities that this allowance is intended to cover include:

- identifying damage;
- attending the Applicants' Briefing;

- completing forms necessary to request assistance;
- establishing files, and providing copies and documentation;
- assessing damage, collecting cost data, and developing cost estimates; and
- working with the State during project monitoring, final inspection, and audits.

The allowance is not intended to cover direct costs of managing specific projects that are completed using public assistance funds. These costs are eligible as part of the grant for each project, as long as they can be specifically identified and justified as necessary to do the work. For example:

The wages of a foreman on the site of a repair project would be a direct cost associated with that project and would not be included in an applicant's Administrative Allowance.

The Administrative Allowance for an applicant is calculated as a percentage of all approved eligible costs that the applicant receives for a given disaster. This percentage is calculated using a sliding scale as indicated in the following table.

Total Amount of PA Program Funds	Allowance
First \$100,000 of net eligible costs	3 percent of the net eligible costs
Next \$900,000 of net eligible costs	2 percent of that \$900,000
Next \$4,000,000 of net eligible costs	1 percent of that \$4,000,000
Net eligible costs in excess of \$5,000,000	½ percent of that excess

States. The Administrative Allowance is provided for the extraordinary costs incurred by a State for overtime pay, per diem, and travel expenses for State employees who participate in the administration of public assistance grants. It does not cover regular time labor costs and other costs directly associated with grant administration.

Examples of administrative activities covered by the allowance include:

- field inspections;
- preparation of damage assessments and cost estimates;
- working with applicants; and
- project monitoring, processing of appeals, final inspections, and audits.

The Administrative Allowance is calculated as a percentage of the Federal share of all public assistance funds actually awarded in the State for a given disaster. The percentage is calculated on eligible costs for the entire disaster using the same sliding scale as that used for applicants.

State Management Administrative Costs

In addition to reimbursement under the Administrative Allowance, States may be reimbursed for the necessary costs of requesting, obtaining, and administering Federal assistance in accordance with 44 CFR 13.22. A *Project Worksheet (PW)* is used to generate the reimbursement of State Management Administrative Costs.

Indirect cost reimbursement is contingent on the State submitting a State Indirect Cost Rate Proposal or a Public Assistance Cost Allocation Plan per Office of Management and Budget Circular A-87, Attachment D and Attachment E, respectively. The proposal or plan should be submitted to FEMA, Office of Financial Management, Disaster Finance Division, Disaster Reports and Analysis Branch for approval.

Categories of Work

To facilitate the processing of public assistance grants, FEMA has divided disaster-related work into seven categories. These categories are divided into emergency work and permanent work as shown in the following table.

Category		Type of Work
Emergency Work:	A	Debris Removal
	B	Emergency Protective Measures
Permanent Work:	C	Roads and Bridges
	D	Water Control Facilities
	E	Buildings and Equipment
	F	Utilities
	G	Parks, Recreational Facilities, and Other Items

Each of these categories is described on the pages that follow.

Category A – Debris Removal

Eligible debris removal activities include the clearance of:

- trees and woody debris;
- building wreckage;
- sand, mud, silt, and gravel;
- vehicles; and
- other disaster-related material.

To be eligible for public assistance, such activities must be necessary to do one of the following:

- eliminate immediate threats to lives, public health and safety;
- eliminate immediate threats of significant damage to improved public or private property; or
- ensure economic recovery of the affected community to the benefit of the community-at-large.

The term “immediate threat” is described in detail on page 50 under Category B – Emergency Protective Measures.

In general, debris on public property that must be removed to allow continued safe operation of governmental functions or to alleviate an immediate threat is eligible. Debris that is blocking streets and highways is a threat to public health and safety because it blocks passage of emergency vehicles or it blocks access to emergency facilities such as hospitals. Debris in a natural stream or flood channel may cause flooding from a future storm. If such flooding would cause an immediate threat of damage to improved property, removal of the debris only to the extent necessary to protect against an immediate threat would be eligible. However, not all public property clearance will necessarily be eligible. Removal of fallen trees in an unused forested or wilderness area would not be eligible.

Where temporary levees have been constructed as an emergency protective measure, removal of them will be eligible only to protect public health and safety or to protect improved public or private property. “Improved property” is defined as a structure, facility, or item of equipment that was built, constructed, or manufactured. It does not include land improved for agricultural use.

Debris on private property is treated somewhat differently. Debris removal from private property is the responsibility of the individual property owner aided by insurance settlements and assistance from volunteer agencies. Many homeowner fire and extended coverage insurance policies have specific coverage for debris removal and for demolition of heavily damaged structures. FEMA assistance is not available to reimburse private property owners for the cost of removing debris from their property; however, an eligible local or State government may pick up and dispose of disaster-related debris placed at the curb by those private individuals. This type of work must be carefully controlled with regard to extent and duration.

If debris on private business and residential property is so widespread that public health, safety, or the economic recovery of the community is threatened, the actual removal of debris from the private property may be eligible. In such situations, the work normally must be done, or be contracted for, by an eligible applicant. If the local government and the State are both incapable of arranging for the work to be done, direct Federal assistance may be requested. Direct Federal assistance is discussed in more detail on page 60 of this guide. Debris removal from private property shall not take place until the State or local government has agreed in writing to indemnify FEMA from a claim arising from such removal and obtained unconditional authorization to remove the debris from the property. Debris removal from agricultural land is not eligible.

Debris cleared from roads and highways, including the travel lanes and shoulders, roadside ditches and drainage structures, and the

maintained right-of-way, may be eligible. For facilities being repaired under the FHWA's ER Program (see page 19), the debris would be removed as part of that work. However, when the ER Program is activated for an area, FHWA assistance is granted only for portions of the road actually damaged by the disaster; therefore, debris on undamaged sections of highway may be eligible for FEMA assistance.

The removal of debris from parks and recreational areas used by the public is eligible when it affects public health or safety or proper utilization of such facilities. Trees frequently constitute a large part of debris in these areas. Normally, trees requiring removal are flush cut at the ground. Stump removal is not eligible unless it is determined that the stump itself poses a hazard, as when the tree has been uprooted. When eligible, stump removal will be accomplished by the most economical means, such as grinding.

Snow removal assistance is described on page 52 under Category B – Emergency Protective Measures.

Category B - Emergency Protective Measures

Emergency protective measures are those activities undertaken by a community before, during, and following a disaster that are necessary to do one of the following:

- eliminate or reduce an immediate threat to life, public health, or safety; or
- eliminate or reduce an immediate hazard that threatens significant damage to improved public or private property.

In general, emergency protective measures must be cost-effective to be eligible.

Generally, those prudent actions taken by a community to warn residents, reduce the disaster damage, ensure the continuation of

essential public services, and protect lives and public health or safety are eligible for assistance. The following list provides examples of activities that may be eligible. Such activities should be evaluated to ensure that the above criteria are met.

- Search and rescue.
- Emergency medical care.
- Emergency mass care and shelter when such cannot be provided by volunteer agencies. If the applicant's facilities are used by the volunteer agency to provide this care, actual expenses incurred by the applicant, such as supplies or cleanup labor, would be eligible. Expenses of PNPs for providing these services are not eligible because their services are generally charitable in nature.
- Security in the disaster area to include alerting the public of dangers by setting up barricades or other warning devices. Labor, equipment, and materials used in these activities are eligible.
- Provision of food, water, ice, and other essential needs at central distribution points for use by local citizens.
- Provision of temporary facilities for essential community services. Examples include construction of a temporary bridge or detour road to replace an essential crossing facility, temporary hookup of utilities, and essential temporary buildings for schools or government offices. Eligibility criteria for temporary relocation are outlined on page 31.
- Activation of a State or local emergency operations center to coordinate and direct the response to a disaster event. Costs must be associated with a time frame related to circumstances justified by the nature of the emergency or disaster. Often an emergency operations center is used to direct response activities for a period of time, and then its primary activity shifts to managing the Federal assistance.

Because the Stafford Act places limitations on reimbursement for the costs of administering the Federal grant, the applicant should make every effort to keep track of which duties are being performed by the center's personnel.

- Demolition and removal of damaged public and private buildings and structures that pose an immediate threat to the safety of the general public. The threat must be identified by local officials and verified by State and Federal officials. Buildings that were condemned as a safety hazard before the disaster are not eligible.
- Removal of health and safety hazards. Such activities may include the following:
 - disposal of dead animals;
 - pumping of trapped floodwaters;
 - pumping of flooded basements, but only if there is a widespread need affecting numerous homes and businesses in the community;
 - pumping of septic tanks or decontamination of wells, but only if there is a widespread pollution problem; and
 - vector control of rodents or insects when there is a serious health hazard, but not when they are merely a nuisance. Verification of the threat by the Federal Centers for Disease Control may be required.
- Construction of emergency protective measures to protect lives or improved property to include the following:
 - temporary levees, berms, dikes, and sandbagging by itself or on top of a levee;
 - buttressing, bracing, or shoring of a damaged structure to protect against further damage to the structure, or to protect the general public;
 - emergency repairs to protective facilities (work is limited to that which would provide protection from a 5-year event or would restore the facility to its pre-disaster design, whichever is less); and

- placement of sand on a beach to serve as protection of improved property from waves and flooding (the same criteria regarding the level of protection, as discussed above, apply).
- Emergency measures to prevent further damage to the facility. Boarding windows or doors and covering the roof are examples of this work.
- Restoration of access. If a privately owned access (such as a driveway, road, or bridge) is damaged, funds for restoration of this access may be eligible either under FEMA's Individual Assistance Program or FEMA's Public Assistance Program. In cases where homes are inaccessible as a result of the damage, PA Program funds may be used to establish emergency access when the work is done by an eligible applicant. The PA Program staff should coordinate with the Human Services staff to eliminate duplication of effort and funds.

The term "immediate threat" used in the above criteria describes the threat of damage from an event that could reasonably occur within 5 years. The following are examples of how this definition applies to various disaster scenarios.

For a flood, the immediate threat exists if a 5-year flooding event could cause damage or threaten lives, public health, and safety. This is not a flood that necessarily happens within 5 years, but a flood that has a 20 percent chance of occurring in any given year.

For a landslide, an immediate threat may exist if the earth on a slope could slide as the result of a moderate amount of rainfall. A geotechnical study may be necessary to determine if an immediate threat exists.

For an earthquake, an immediate threat may exist if moderate ground shaking, such as might be expected during an aftershock, could cause further damage to a structure or threaten the safety of the structure's occupants.

For a hurricane, an immediate threat may exist if a facility damaged by storm surge could be exposed to additional flooding from a subsequent 5-year event. Similarly, if a wind-damaged facility is subject to additional damage by moderate winds, such winds could be considered an immediate threat.

Other Types of Emergency Work. Specific eligibility criteria may also apply to the provision of emergency communications, public transportation, building inspections, and snow removal. These criteria are defined as follows.

Emergency Communications. The communications system in a local community may be damaged by a disaster to the extent that the local officials are unable to carry out their duties of providing essential community services or responding to the disaster. If this is the case, the establishment of a temporary emergency communications system may be eligible for assistance. This would most often take the form of a mobile radio system or cellular telephones, if the area is served by a cellular system.

Such a system is meant to supplement the portion of the community's communications that remains operable, not to replace or expand the pre-disaster system. The community is expected to repair the damaged system on an expedited basis so that the assistance can be terminated when there is no longer an emergency need.

Emergency Public Transportation. The essential portions of a community's transportation system may be damaged by a disaster to such an extent that the vital functions of community life are disrupted. This situation may involve damage to buses, a subway system, or a bridge between two sections of the city. For some of these damaged facilities, replacement with temporary facilities may provide the solution. In other situations, there may not be a specific damaged facility, but there is still a need to supplement existing transportation.

This condition may result from temporary changes in the location of government facilities or residential areas or a need to access different shopping areas. The supplemental system must be required to ensure access to public places, employment centers, post offices, and schools so that a normal pattern of life may be restored as soon as possible.

Alternative means of providing transportation, such as extra buses or trains or new bus routes, may be eligible. The damaged facilities should be restored, or the need for supplemental transportation should be addressed, as soon as possible so that the assistance can be terminated when there is no longer an emergency need.

Building Inspection. Safety inspections that are necessary to establish if a damaged structure poses an immediate threat to life, public health, or safety after a disaster are eligible. Inspections associated with the reconstruction effort and normal building regulation enforcement process are not eligible, because these inspections go beyond the scope of a safety inspection.

Snow Removal. Snow removal assistance may be eligible for public assistance provided that:

- the snowfall is of record or near record amount;
- the response is beyond the State and local government capabilities; and
- the action is necessary to save lives, protect public health and safety, and protect improved property.

Heavy snowfall over an extended period of time, severe winds and extraordinary drifting, extraordinary ice formations, and the cumulative effect of snow on the ground may be the basis for assistance when the snow depth does not meet the record amount but approximates it.

Snow removal assistance will be provided for a 48-hour period to address the most critical emergency needs. The 48-hour period for snow removal assistance may begin at a time other than when the storm actually began. Each applicant will designate the beginning of its 48-hour period.

Category C – Roads and Bridges

Roads, bridges, and associated facilities are eligible for public assistance. For roads (paved, gravel, and dirt), eligible items include:

- surfaces;
- bases;
- shoulders;
- ditches;
- drainage structures; and
- low water crossings.

For bridges, eligible items include:

- decking and pavement;
- piers;
- girders;
- abutments;
- slope protection; and
- approaches.

Only repairs to disaster-related damage are eligible. In some cases, it may be possible to review pre-disaster bridge inspection reports to determine if damage to a bridge was present before the disaster. As discussed on page 20, permanent restoration of any facility, whether it is a road, bridge, or auxiliary structure, that falls

under the authority of the FHWA is not eligible for public assistance. Other examples of ineligible facilities include roads that service USACE or NRCS levees and dams, private and commercial roads, and homeowners' association roads.

For Category C work, upgrades necessary to meet current standards for road and bridge construction, such as standards for pavement and lane width, may be eligible for public assistance. However, FEMA will not fund construction of additional lanes because such work is beyond that necessary to restore the pre-disaster capacity of the facility.

Landslides. Specific eligibility criteria also apply to slope failures and washouts that are considered landslides. A landslide occurs when a mass of soil, rock, or other material on a slope moves, or threatens to move due to adjacent slope failure, as a result of the disaster. Such slope failures may be caused by soil saturation or by erosion. Stabilization or restoration of failed slopes is only eligible in the situations described below.

Emergency work: If a disaster-related landslide poses an immediate threat to life, public health, and safety, or improved public or private property, cost-effective measures for reducing the threat may be eligible. Examples include evacuation, excavation, buttressing, de-watering, modification of surface drainage, and grading. Such measures must be temporary in nature. Public assistance will be provided to address the area of the immediate threat only, not to stabilize the entire hillside.

Permanent work: If a landslide damages an eligible facility, repairs to that facility are eligible as long as the site is stable. The replacement of a reasonable amount of natural ground necessary to support the facility is eligible. However, if the site was unstable before the disaster, the applicant must pay to stabilize the site before public assistance funds are provided to repair the facility. In some cases, the stability of a site cannot

be determined through visual inspection, and a geotechnical study to determine the existence of instability may be necessary. The cost of such a study may be eligible for public assistance.

Category D – Water Control Facilities

Water control facilities include:

- dams and reservoirs;
- levees;
- lined and unlined engineered drainage channels;
- shore protective devices;
- irrigation facilities; and
- pumping facilities.

Restoration of the carrying capacity of engineered channels and debris basins may be eligible, but maintenance records or surveys must be produced to show the pre-disaster capacity of these facilities. The pre-disaster level of debris in the channel or basin is of particular importance to determine the amount of newly deposited disaster-related debris. Such a facility must also have had a regular clearance schedule to be considered an actively used and maintained facility.

Restoration of reservoirs to their pre-disaster capacity also may be eligible in accordance with the criteria for debris basins described above. Not all reservoirs are cleaned out on a regular basis, and evidence of pre-disaster maintenance must be provided to FEMA. In addition, removal of debris that poses an immediate threat of clogging or damaging intake or adjacent structures may be eligible.

The USACE and NRCS have primary authority for repair of flood control works, whether constructed with Federal or non-Federal funds, as well as authority over federally funded shore protective

devices. Permanent repairs to these facilities are not eligible through the PA Program.

Category E – Buildings and Equipment

Buildings, including contents such as furnishings and interior systems such as electrical work, are eligible for repair or replacement. In addition to contents, public assistance may be requested for the replacement of pre-disaster quantities of consumable supplies and inventory and for the replacement of library books and publications. Removal of mud, silt, or other accumulated debris is eligible, along with any cleaning and painting necessary to restore the building.

If an insurance policy applies to a building, FEMA must take that policy into account before providing funds for restoration of the building. The owners of insurable buildings can expedite the grant process by providing FEMA with policy and settlement information as soon as possible after a disaster occurs. Detailed information on insurance is contained in Chapter 4.

FEMA may pay for upgrades that are required by certain codes and standards. An example might be roof bracing installed following a hurricane. For repairs, upgrades are limited to damaged elements only. If a structure must be replaced, the new facility must comply with all appropriate codes and standards. Refer to page 27 for details.

If a damaged building must be replaced, FEMA has the authority to pay for a building with the same capacity as the original structure. However, if the standard for space per occupant has changed since the original structure was built, FEMA will pay for construction of a larger building to the original design capacity. A Federal, State, or local agency or statute must mandate the increase in space; the increase cannot be based only on design practices for an industry or profession. FEMA will not fund additional capacity necessary due to increased population or use, even if required by code.

When museums, either publicly owned or owned by a PNP, are involved in disasters, culturally significant collections or objects may be damaged. Collections and objects in a museum, by their very nature, generally are one-of-a-kind and thus cannot be replaced. Therefore, replacement of destroyed collections or objects is not an eligible cost.

FEMA may, however, fund stabilization measures. Stabilization involves taking the minimum steps necessary to return a collection or object to a condition in which it can function in the same capacity as it did prior to the disaster. FEMA's Preservation Officer (or designer) in consultation with the applicant and the State, will use professional judgement to determine if additional treatment beyond stabilization is necessary to maintain the integrity of the collection or object and return it to its pre-disaster function.

When equipment, including vehicles, is not repairable, FEMA will approve the cost of replacement with used items that are approximately the same age, capacity, and condition. Replacement of an item with a new item may be approved only if a used item is not available within a reasonable time and distance.

When a piece of applicant-owned equipment is performing eligible disaster work, extraordinary damage to the equipment that is caused by the disaster may be eligible. However, the cost of increased maintenance resulting from excess use is not eligible, because the cost of maintenance is included in FEMA's equipment rates. Damage that could have been reasonably avoided such as an accident also is not eligible. Reimbursement for the eligible damage is in addition to the applicable FEMA equipment rate being paid for the time the equipment was performing eligible work.

Category F – Utilities

Utilities include:

- water treatment plants and delivery systems;

- power generation and distribution facilities, including generators, substations, and power lines; and
- sewage collection systems and treatment plants.

The owner of a facility is responsible for determining the extent of damage; FEMA does not provide funds for random surveys to look for damage, such as video inspection of sewer lines. If disaster-related damage is evident, however, FEMA may pay for inspections to determine the extent of the damage and method of repair. When disaster-related damage is discovered during a random survey, inspection of the damaged section only is eligible. When evaluating the repair of damage at multiple locations in a pipeline or other continuous facility, the possibility of replacing a whole section should be investigated. If the breaks are close together, replacing the entire section may be more economical than piecemeal repair.

While FEMA will pay for restoration of damaged utilities, FEMA does not provide funds for increased operating expenses resulting from a disaster. Similarly, FEMA cannot provide funds for revenue lost if a utility is shut down. However, the cost of establishing temporary emergency services in the event of a utility shut-down may be eligible.

Category G – Parks, Recreational, and Other

Eligible publicly-owned facilities in this category include:

- playground equipment;
- swimming pools;
- bath houses;
- tennis courts;
- boat docks;
- piers;

- picnic tables; and
- golf courses.

Other types of facilities, such as roads, buildings and utilities, that are located in parks and recreational areas are also eligible and are subject to the eligibility criteria for Categories C, D, E, and F.

As stated on page 16 of this guide, natural features are not eligible facilities unless they are improved and maintained. This restriction applies to features located in parks and recreational areas. Specific criteria apply to beaches and to trees and ground cover, as described below.

Beaches. Emergency placement of sand on a natural or engineered beach may be eligible when necessary to protect improved property from an immediate threat. Protection may be to a 5-year storm profile or to its pre-storm profile, whichever is less.

A beach is considered eligible for permanent repair if it is an improved beach and has been routinely maintained prior to the disaster. A beach is considered to be an “improved beach” if the following criteria apply:

- the beach was constructed by the placement of sand to a designed elevation, width, grain size, and slope; and
- the beach has been maintained in accordance with a maintenance program involving the periodic re-nourishment of sand at least every 5 years.

Typically, FEMA will request the following from an applicant before approving assistance for permanent restoration of a beach:

- design documents and specifications, including analysis of grain size;
- “as-built” plans;

- documentation of regular maintenance or nourishment of the beach; and
- pre- and post-storm cross sections of the beach.

Permanent restoration of sand on natural beaches is not eligible.

Trees and Ground Cover. The replacement of trees, shrubs, and other ground cover is not eligible. This restriction applies to trees and shrubs in recreational areas, such as parks, as well as trees and shrubs associated with public facilities, such as those located in the median strips along roadways and as landscaping for public buildings. Grass and sod are eligible only when necessary to stabilize slopes and minimize sediment runoff.

This restriction does not affect removal of tree debris or the removal of trees as an emergency protective measure. FEMA will reimburse for the removal of tree debris and the removal of trees as emergency protective measures if the removal eliminates an immediate threat to lives, public health and safety, and improved property, or if removal is necessary to ensure the economic recovery of the affected community to the benefit of the community-at-large. However, FEMA will not reimburse for the replacement of these trees.

Direct Federal Assistance

When the impact of a disaster is so severe that neither the State nor local government can respond, the State may request that certain emergency work be performed directly by a Federal agency. FEMA, through “mission assignments”, may use appropriate Federal agencies to perform this work.

The work to be performed must be eligible under the Stafford Act and Federal regulations and is limited to the following:

- debris removal; and
- emergency protective measures.

The assistance will also be subject to the cost-sharing provisions applicable to the disaster. The State will reimburse FEMA for the appropriate non-Federal share of the cost of the work, including any administrative costs of the performing Federal agency.

A request for direct Federal assistance must be submitted by the State to the DRM either on its own behalf or on behalf of an applicant. The request must include the items listed below.

- A written agreement that the State will:
 - provide, without cost to the United States, all lands, easements, and rights-of-way necessary to complete the approved work;
 - hold and save the United States free from damages due to the requested work and indemnify the Federal government against any claims arising from such work;
 - provide reimbursement to FEMA for the non-Federal share of the cost of the work; and
 - assist the performing Federal department or agency in all support and local jurisdictional matters.
- A statement explaining why the State and local governments are unable to perform or contract for the work.
- If the State is legally unable to agree to the first two items listed under the first bullet above, an agreement from the applicant that it will be responsible for the items. The provision of lands, easements, or rights-of-way without cost to the United States means that any leasing or purchase costs will be borne by non-Federal interests. The costs of preparation for the assistance operations and costs of restoration to pre-operation conditions will be eligible for Federal assistance.

If the DRM concurs with the request, a mission assignment will be made to the appropriate Federal agency. That agency may perform the work directly or it may contract with private firms.

CHAPTER 3

APPLYING FOR PUBLIC ASSISTANCE

Following a disaster declaration by the President, FEMA makes assistance for recovery from the disaster available to eligible applicants. This chapter describes the process through which this assistance becomes available.

Process Overview

The PA Program is implemented through the steps listed below, each of which is described in detail in this chapter.

- An Applicants' Briefing is held.
- Potential applicants submit the *Request for Public Assistance*.
- A PAC is assigned to each applicant.
- The PAC holds a Kickoff Meeting with the applicant.
- The applicant's specific needs are identified and cost estimates developed through the project formulation process.
- Cost estimates for small projects that have been prepared by the applicant are checked through the validation process.
- FEMA approves and processes grants for the applicant's projects.

Projects. A project is a logical method of performing work required as a result of the declared event. A project may consist of one item of work, such as repairs to a single structure, or work that occurs at multiple sites, such as repairs to several washouts along a road. The applicant is responsible for identifying all work that is required as a result of the disaster. The PAC may assist the applicant in combining various recovery efforts into projects.

Applicants' Briefing

An Applicants' Briefing is a meeting conducted by a representative of the State for potential public assistance applicants. The briefing occurs after an emergency or major disaster has been declared and addresses application procedures, administrative requirements, funding, and program eligibility criteria.

The State representative is responsible for notifying potential applicants of the date, time, and location of the briefing. The size of the disaster area and the number of possible applicants determine whether more than one briefing is held. FEMA personnel should participate in the briefing to clarify issues regarding eligibility, floodplain management, insurance requirements, environmental and historic considerations, and Federal procurement standards. To obtain the maximum benefit from the information presented at the briefing, each applicant should send representatives from each of the following:

- management;
- public works; and
- finance.

Representatives of potentially eligible PNPs should attend the briefing.

Request for Public Assistance (Request)

The *Request for Public Assistance (Request)* is an applicant's official notification to FEMA of the intent to apply for public assistance. A copy of this form is shown in Figure 1. The form outlines general information identifying the applicant, including the applicant's name, address, and primary and secondary contacts.

FEDERAL EMERGENCY MANAGEMENT AGENCY REQUEST FOR PUBLIC ASSISTANCE		O.M.B. No. 3067-0151 Expires April 30, 2001	
PAPERWORK BURDEN DISCLOSURE NOTICE Public reporting burden for this form is estimated to average 10 minutes. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and submitting the forms. You are not required to respond to this collection of information unless a valid OMB control number is displayed in the upper right corner of the forms. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, Paperwork Reduction Project (3067-0151). NOTE: Do not send your completed form to this address.			
APPLICANT (Political subdivision or eligible applicant.)		DATE SUBMITTED	
COUNTY (Location of Damages. If located in multiple counties, please indicate.)			
APPLICANT PHYSICAL LOCATION			
STREET ADDRESS			
CITY		COUNTY	
STATE		ZIP CODE	
MAILING ADDRESS (If different from Physical Location)			
STREET ADDRESS			
POST OFFICE BOX		ZIP CODE	
Primary Contact/Applicant's Authorized Agent		Alternate Contact	
NAME		NAME	
TITLE		TITLE	
BUSINESS PHONE		BUSINESS PHONE	
FAX NUMBER		FAX NUMBER	
HOME PHONE (Optional)		HOME PHONE (Optional)	
CELL PHONE		CELL PHONE	
E-MAIL ADDRESS		E-MAIL ADDRESS	
PAGER & PIN NUMBER		PAGER & PIN NUMBER	
Did you participate in the Federal/State Preliminary Damage Assessment (PDA)? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Private Non-Profit Organization? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, which of the facilities below best describe your organization? _____			
Title 44 CFR, part 206.221(e) defines an eligible private non-profit facility as: "... any private non-profit educational, utility, emergency, medical or custodial care facility, including a facility for the aged or disabled, and other facility providing essential governmental type services to the general public, and such facilities on Indian reservations." "Other essential governmental service facility" means museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and safety services of a governmental nature. All such facilities must be open to the general public.			
Private Non-Profit Organizations must attach copies of their Tax Exemption Certificate and Organization Charter or By-Laws. If your organization is a school or educational facility, please attach information on accreditation or certification.			
Official Use Only: FEMA- _____ -DR- _____ - FIPS # _____ Date Received: _____			

Figure 1

Typically the *Request* form is submitted at the Applicants' Briefing. If an applicant is unable to submit the *Request* at the Applicants' Briefing, the applicant must submit the form within 30 days of the date of designation of the county for public assistance. An applicant need not wait until all damage is identified before requesting assistance. Federal and State personnel will review each *Request* to ensure applicant eligibility. Once a *Request* has been submitted, the project formulation process can begin.

As *Requests* are submitted, the State may designate a State Applicant Liaison (Liaison) who will ensure that the applicant's needs are met. The Liaison will work closely with the applicant and FEMA throughout the recovery process.

Assignment of the Public Assistance Coordinator (PAC)

Once the *Request* has been forwarded to FEMA, the applicant is assigned to a PAC. The PAC is a FEMA program expert who serves as the applicant's customer service representative on PA Program matters and manages the processing of the applicant's projects. The PAC, in coordination with the Liaison:

- meets with the applicant to discuss the program and its application to the applicant's specific needs;
- works with the applicant to develop projects;
- obtains the appropriate technical assistance if required by the applicant;
- ensures that projects comply with all applicable laws, regulations, and policies;
- ensures that any Special Considerations associated with a project are identified and reviewed;
- coordinates with the State as necessary to resolve problems; and

- maintains the applicant's Case Management File, an electronic record of the steps taken to provide the applicant with assistance.
-

Kickoff Meeting

Within one week of FEMA's receipt of an applicant's *Request*, the PAC and Liaison will contact the applicant to schedule a Kickoff Meeting. This meeting differs from the Applicants' Briefing conducted by the State at the onset of disaster operations. Whereas the Applicants' Briefing describes the application process and gives a general overview of the PA Program, the Kickoff Meeting is designed to provide a much more detailed review of the PA Program. The meeting is the first step in establishing a partnership among the PAC, the Liaison, and the applicant and is designed to focus on the specific needs of that applicant. This approach allows the PAC and Liaison to concentrate on the eligibility and documentation requirements that are most pertinent to an applicant.

The PAC also discusses Special Considerations, such as floodplain management, insurance, hazard mitigation opportunities, and compliance with environmental and historic preservation laws, that could potentially affect the type and amount of assistance available and the documentation needed. Special Considerations are discussed in Chapter 4.

Project Formulation

Project formulation is the process of identifying the eligible scope of work and estimating the costs associated with that scope of work for each of the applicant's projects. This section describes the elements of the project formulation process.

Small and Large Projects

To facilitate project review, approval, and funding, projects are divided into two groups. The division is based on the monetary threshold established in Section 422 of the Stafford Act and elaborated on in 44 CFR 206.203(c). Small projects are those projects with a total estimated cost below the threshold, and large projects are those projects with a total estimated cost at or above the threshold. The threshold is adjusted each fiscal year to account for inflation. For fiscal year 1999, the threshold is \$47,800. The determination of the threshold that will be used for a disaster is based on the declaration date of the disaster, regardless of when project approval is made or when the work is performed. Funding methods for small and large projects differ as explained below.

Small Projects. Small project funding is based on estimated costs, if actual costs are not yet available. This simplified procedure was provided in the Stafford Act to streamline processing and speed payment to the applicant. The State forwards the total Federal share of funds to the applicant as soon as practicable after project approval. Payment methods are described in more detail on page 82 of this guide.

Large Projects. Large project funding is based on documented actual costs. Because of the complexity and nature of most large projects, however, work typically is not complete at the time of FEMA approval. Therefore, large projects initially are approved based on estimated costs. Funds generally are made available to the applicant on a progress payment basis as work is completed. When all work associated with the project is complete, the State performs a reconciliation of actual costs and transmits the information to FEMA for final funding adjustments. Payment methods are described in more detail on page 83 of this guide.

The Project Worksheet

The *Project Worksheet (PW)* is the primary form used to document the scope of work and cost estimate for a project (Figure 2). The *PW* includes the location, damage description and dimensions, scope of work, and cost estimate for each project.

The applicant is responsible for preparing *PWs* for small projects and submitting the *PWs* to the PAC. The applicant must submit small project *PWs* to the PAC within 60 days of the Kickoff Meeting. However, applicants are strongly encouraged to submit *PWs* as soon as possible to expedite the assistance process. If the applicant requires assistance with the preparation of *PWs*, the PAC may assign a Project Officer or Specialist to provide the applicant with technical assistance.

For large projects, a Project Officer is responsible for working with the applicant to prepare the *PW*. The Project Officer may lead a team that includes a representative of the State and one or more Specialists, depending on the type and complexity of the project.

Combining Work and Creating Projects

The applicant, in coordination with the PAC, may combine work items into projects. In this manner, the projects may be organized around the applicant's needs. A project may consist of one item of work or it may consist of several. The table on page 71 describes methods of combining projects.

FEDERAL EMERGENCY MANAGEMENT AGENCY PROJECT WORKSHEET				O.M.B. No. 3067-0151 Expires April 30, 2001	
PAPERWORK BURDEN DISCLOSURE NOTICE Public reporting burden for this form is estimated to average 30 minutes. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and submitting the forms. You are not required to respond to this collection of information unless a valid OMB control number is displayed in the upper right corner of the forms. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, Paperwork Reduction Project (3067-0151). NOTE: Do not send your completed form to this address.					
DECLARATION NO. FEMA- _____-DR- _____	PROJECT NO.	FIPS NO.	DATE	CATEGORY	
DAMAGED FACILITY			WORK COMPLETE AS OF: _____ : _____ %		
APPLICANT		COUNTY			
LOCATION			LATITUDE	LONGITUDE	
DAMAGE DESCRIPTION AND DIMENSIONS					
SCOPE OF WORK					
Does the Scope of Work change the pre-disaster conditions at the site? <input type="checkbox"/> Yes <input type="checkbox"/> No					
Special Considerations/issues included? <input type="checkbox"/> Yes <input type="checkbox"/> No Hazard Mitigation proposal included? <input type="checkbox"/> Yes <input type="checkbox"/> No					
Is there insurance coverage on this facility? <input type="checkbox"/> Yes <input type="checkbox"/> No					
PROJECT COST					
ITEM	CODE	NARRATIVE	QUANTITY/UNIT	UNIT PRICE	COST
			/		
			/		
			/		
			/		
			/		
			/		
			/		
			/		
			/		
			/		
				TOTAL COST	
PREPARED BY:			TITLE:		

Figure 2

Method	Explanation
Type of damage	<ul style="list-style-type: none"> an applicant could combine all sewer pump stations or gravel roads together
System	<ul style="list-style-type: none"> an applicant could combine repair of several breaks in a water distribution system together
Boundaries	<ul style="list-style-type: none"> an applicant may have divided power lines into sectors or a road department into divisions for ease of operation
Method of work	<ul style="list-style-type: none"> one contract could be a project or a group of contracts let to one contractor could be a project

Note that emergency work and permanent work may be combined into one project only when the emergency work is incidental to the permanent work. For example, if storm-generated debris must be removed from a building before the building can be repaired, the project could include both the debris removal and the repair work.

If multiple sites are combined into one project with an estimated cost above the large project threshold, that project will be considered a large project. A Project Officer will be assigned to work with the applicant to complete the *PW* for that project.

Damage Description and Scope of Work

A complete, accurate damage description and scope of work must be developed for each project. Critical elements include:

- the project location;
- the description, dimensions, and cause of damage; and
- the scope of eligible work necessary to repair the damage.

Project Location. The exact location of the damaged facility or area where the disaster costs covered by the project were or will be incurred must be identified. This information should be specific enough to enable other field personnel to easily locate the facility if a site visit is necessary. If possible, the precise latitude and longitude of the damaged site should be included.

Damage Description and Dimensions. The cause of damage, a description of the damaged elements of the facility, and the dimensions of the damaged elements must be included on the PW.

The specific cause of damage must relate to the incident for which the disaster was declared. It is important to completely describe the cause of damage because it can affect eligibility determinations. For instance, consider the two situations described below.

- If an uninsured public building located in the 100-year floodplain is damaged by wind, the total cost of repairs is eligible. However, if the same building is damaged by a flood, the amount of assistance would be reduced by the maximum amount of flood insurance available under the National Flood Insurance Program.
- Widespread “alligator cracking” of roads generally is not eligible for repair because it indicates damage that was present before the disaster. However, cracking in specific areas due to uplift from soils saturated by floodwaters is eligible for repair.

The damage must be described in terms of the facility, features, or items requiring repair. All damaged elements must be clearly defined in quantitative terms with physical dimensions (such as length, width, depth, and capacity). Without appropriate

dimensions of the damaged elements, proper estimates of material quantities cannot be developed. It may also be necessary to provide a brief description of the pre-disaster condition and use of facility.

In some disasters, applicants may perform work to protect against a threat to improved property. For such situations, the *PW* should contain a brief description of the threat and of the threatened improved property.

Scope of Work. The scope of work necessary to repair the damage must be completely described and correspond directly to the cause of damage. The work should be specified as an action with quantifiable (length, width, depth, capacity) and descriptive (brick, wood, asphalt, timber deck bridge) terms. The scope of work should not be described only as “restore to pre-disaster design.” If part of the work is completed prior to project approval, the actual work that was performed should be distinguished from the work remaining.

Any other information that is pertinent to the scope of work, such as upgrades required by current codes and standards, should be documented. Copies of codes and standards may be required to be submitted. Evidence of pre-disaster damage, such as pre-disaster inspection reports, should be documented.

Cost Estimate

FEMA may grant funds on the basis of actual costs or on estimates of work to be completed. The three primary methods for determining costs are time and materials, unit cost, and contracts. The method used to determine costs for a particular project depends on whether the work is complete or to be completed.

Work Complete

If the work was completed by force account labor, actual personnel, materials and equipment costs are used (time and materials method.) If a contractor performed the work, reasonable actual contract costs are used.

Work to be completed

If the work has not been initiated, the unit cost method should be used whenever possible.

Time and Materials. The time and materials method is used to summarize actual costs of force account labor, equipment, and materials. Costs must be documented by payroll information, equipment logs or usage records, and other records, such as invoices, receipts, or work orders prepared by the applicant.

As stated in Chapter 2, FEMA publishes a national listing of equipment rates. FEMA equipment rates, however, do not include operator costs. The applicant should identify operator labor separately. FEMA equipment rates do not apply to contracted or rental equipment, unless the equipment is rented from another public entity. An applicant's own equipment rates or rates established by the State may be used, provided that they meet the criteria outlined in Chapter 2.

Unit Cost. The unit cost method is used to develop *PWs* for work to be completed. Under this method, unit costs are applied to specific elements of the scope of work. Typically unit prices are based on in-place costs, incorporating materials, labor, equipment, insurance, overhead, and profit for all activities needed to complete that item of work. For example:

The \$14 per linear foot unit cost to replace concrete curb and gutter includes all costs for setting up and breaking down the forms and pouring and finishing the concrete. In other words, the \$14 includes the cost of labor, equipment, and materials.

There are numerous sources that may be used in the preparation of estimates based on unit costs. These sources include:

- commercial estimating sources;
- State or local data from previously completed projects; and
- FEMA cost codes.

Contracts. Contract pricing is used to determine the cost of work for which the applicant has used labor, equipment, and material from an outside source. In general, contract costs are used for work already complete, but in some cases contract information may be used to estimate costs for work that is just beginning or still underway. If work has not yet begun on a project, but a contract has been bid or let, the contract price can be used.

Engineering and Design Services

The costs of basic engineering and design services normally performed by an architectural-engineering firm on complex construction projects are eligible for reimbursement. Such services include:

- preliminary engineering analysis;
- preliminary design;
- final design; and
- construction inspection.

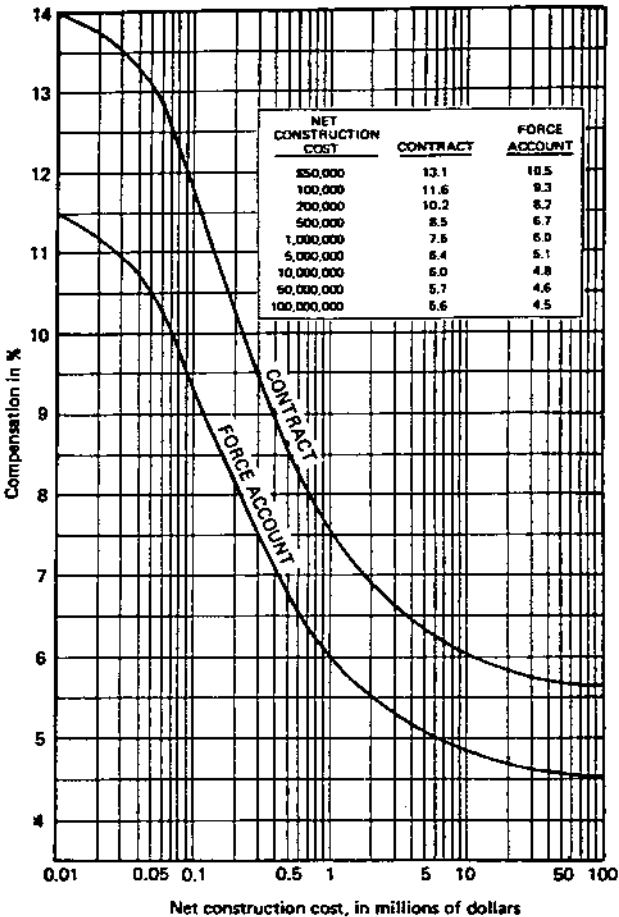
While a final inspection and reconciliation will be used to determine the actual costs for reimbursement of these services, the costs can be estimated during project formulation using a percentage of the construction cost. Percentages are derived from FEMA engineering and design services cost curves. These curves, which were developed for FEMA by the American Society of Civil Engineers, show a correlation between engineering costs and total construction costs. These curves are shown in Figures 3 and 4. To use the curves, estimate construction costs for a project. Find the construction cost on the horizontal axis and, using the appropriate curve for either force account or contract work, read the associated percentage of engineering and design services from the vertical axis. This percentage can be multiplied by the estimated construction cost to determine an appropriate engineering and design cost estimate.

Curve A applies to projects of above-average complexity and non-standard design. Examples of such projects include:

- airports with extensive terminal facilities;
- water, wastewater, and industrial waste treatment plants;
- hospitals, schools, and office buildings;
- power plants;
- large dams and complicated small dams;
- highway and railway tunnels;
- pumping stations;
- incinerators; and
- complicated waterfront and marine terminal facilities.

ENGINEERING AND DESIGN SERVICES

CURVE A, COMPENSATION FOR BASIC SERVICES EXPRESSED AS A PERCENTAGE OF CONSTRUCTION COST FOR PROJECTS OF ABOVE-AVERAGE COMPLEXITY AND NON-STANDARD DESIGN

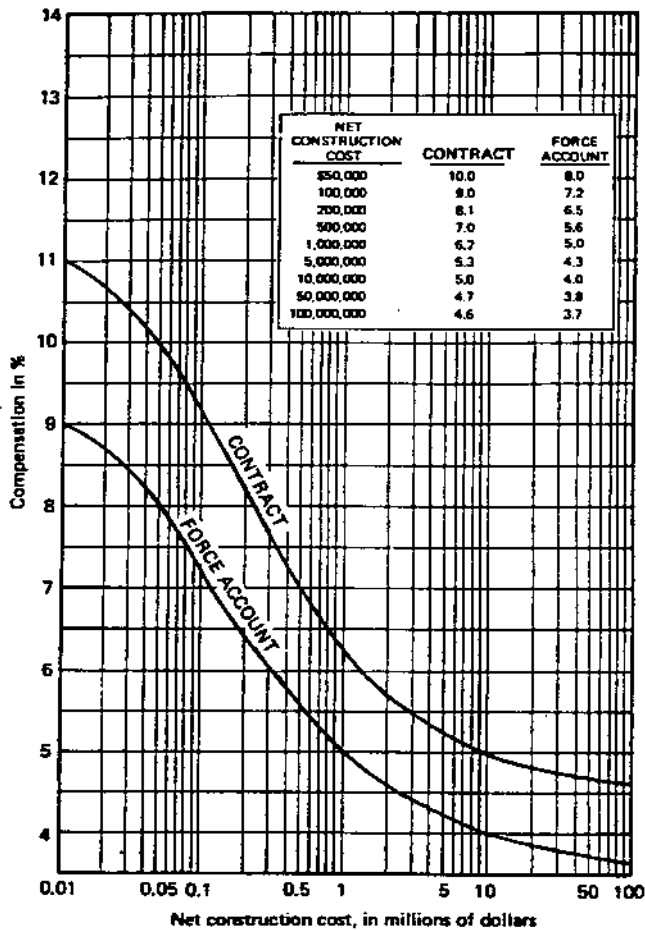


“Contract” and “Force Account” above mean engineering and design services performed by contract or by an applicant’s own employees, respectively.

Figure 3 - Cost Curve A

ENGINEERING AND DESIGN SERVICES

**CURVE B, COMPENSATION FOR BASIC SERVICES EXPRESSED
AS A PERCENTAGE OF CONSTRUCTION COST FOR PROJECTS OF
AVERAGE COMPLEXITY**



"Contract" and "Force Account" above mean engineering and design services performed by contract or by an applicant's own employees, respectively.

Figure 4 - Cost Curve B

Curve B applies to projects of average complexity. Examples of such projects include:

- industrial buildings, warehouses, garages, hangars, and comparable structures;
- bridges and other structures of conventional design;
- simple waterfront facilities;
- roads and streets;
- conventional levees, floodwalls, and retaining walls;
- small dams;
- storm sewers and drains;
- sanitary sewers;
- water distribution lines;
- irrigation works, except pumping plants; and
- airports, except as classified for Curve A.

In addition to the basic engineering services, special services may be required for some projects. Such services include engineering surveys, soil investigations, services of a resident engineer, and feasibility studies. Because special services are not required on all projects, they are not included in the percentages on the engineering and design services curves. These services are estimated separately.

If a project requires only basic construction inspection services, a fee not exceeding 3 percent of construction costs may be used for the estimate. Inspection functions include review of bids, work site inspection visits, checking and approval of material samples, review of shop drawings and change orders, review of contractor's request for payment, and acting as the client's representative. An example of a project requiring only inspection services but no design would be a debris disposal site where the material must be carefully placed and compacted to ensure stability.

Estimates for engineering and design services and construction inspection typically are not included in small project estimates except for complex projects or projects where special services are required.

Validation

The applicant may prepare *PWs* for small projects. While some applicants may request assistance from FEMA or the State in preparing their *PWs*, other applicants will proceed without assistance. Validation is conducted for those applicants who prepare their own *PWs*. The purpose of the small project validation process is to ensure that:

- the applicant has developed complete, accurate scopes of work;
- the work and costs included in the *PWs* are eligible for public assistance; and
- the cost estimates are accurate and reasonable.

Typically, only 20 percent of an applicant's small projects are assessed in the validation process. However, if significant discrepancies are found in the sample, a second sample of 20 percent is assessed. If discrepancies are again found in that sample, the applicant will be provided with technical assistance for review of all small projects.

Note that the 20 percent sample only applies to projects submitted within 30 days of the date of the Kickoff Meeting. Although an applicant has 60 days to submit all small *PWs*, small *PWs* submitted after 30 days are subject to 100 percent validation. For this reason, applicants are encouraged to submit small project *PWs* as early as possible.

Validated projects will be reviewed for work, cost, contract eligibility, and Special Considerations as described on page 81.

Work. Projects will be reviewed to ensure that the work meets all applicable eligibility criteria, as described in Chapter 2. The damage description and scope of work must be accurate and complete. The review will ensure that the scope of work is appropriate for the type and dimensions of damage, and that Special Considerations are clearly documented (these considerations are described in Chapter 4).

Cost. Costs will be reviewed to ensure that they are error-free and eligible. Applicants must provide labor, equipment, and materials summaries for use in the review. Items that will be checked include:

- identification of persons whose wages are being included in the cost summary, by date, position, and hours worked;
- separate summaries for overtime and regular time hours with the fringe benefit rates identified for both;
- a summary of operator hours for any equipment being claimed (operator hours must match or exceed equipment hours; note that regular time hours for emergency work, even though ineligible, are needed to justify equipment usage);
- identification of volunteer, prison, or reassigned labor; and
- copies of purchase orders, invoices, inventory records, or stock tickets with material type and quantity included.

Contract. Contracts will be reviewed to ensure that they adhere to appropriate procurement regulations, are based on reasonable costs, and pertain to the eligible scope of work. A copy of the contract must be on file.

Special Considerations. The Specialist who conducts the validation must note possible Special Considerations, such as insurance, floodplain management, hazard mitigation, and compliance with environmental and historic preservation laws, and report those considerations to the PAC.

Large Projects

Large projects will not be validated. The Project Officer, working with the applicant, is responsible for developing the scope of work and cost estimate for a large project and submitting the *PW* to the PAC for review and processing.

Grant Processing

FEMA and the State share responsibility for making PA Program funds available to the applicant. FEMA is responsible for approving projects and making the Federal share of the approved amount (that is, the grant) available to the State through a process known as obligation. Funds that FEMA has obligated are available to the State via electronic transfer, but reside in a Federal account until the State is ready to award grants to the appropriate applicants. The State is responsible for providing the State share of the grant amount and for notifying the applicant that funds are available. The State must use methods and procedures for payment that minimize the time between the transfer of funds and disbursement by the State in accordance with Federal cash management requirements. FEMA funds should be requested by the State to cover the immediate cash needs of the applicant only.

The method of payment to the applicant is dependent on the type of project.

Methods of Payment

Small Projects. Payment for small projects is made on the basis of the estimate prepared at the time of project approval. The State is required to make payment of the Federal share to the applicant as soon as practicable after FEMA has obligated the funds.

Once all small projects are complete, the State must certify that work has been completed in accordance with the approved scope of work on the *PW*, in compliance with FEMA standards and policies, and that all payments due have been made. This certification does not specify the amount spent on the projects, only that the projects were completed. If the applicant spends less than the amount approved by FEMA, the Federal share will not be reduced to match actual costs. However, if the applicant incurs costs significantly greater than the total amount approved for ***all*** small projects, the applicant may apply for additional funding.

Note that this opportunity applies only to a net cost overrun for all small projects, not to an overrun for an individual project. This policy is based on the fact that small projects with cost underruns typically will offset those small projects where the applicant experienced cost overruns.

Large Projects. Large projects are funded on documented actual costs. Because of the nature of most large projects, work typically is not complete at the time of project approval; therefore, FEMA will obligate grants based on an estimated cost.

Such monies may not be immediately drawn down by the State. Instead, progress payments are made to the applicant as actual costs are documented. Upon completion of a large project, an applicant must submit documentation to account for all incurred costs to the State. The State is responsible for ensuring that all incurred costs are associated with the approved scope of work and for certifying that work has been completed in accordance with FEMA standards and policies. The State then submits documentation of project costs to FEMA for review. FEMA may conduct a final inspection as part of this review. Once the review is complete, FEMA determines whether funds should be obligated or deobligated for the project.

Funding Options

Grants for most projects are processed in the manner described above. However, an applicant may elect to use a public assistance grant for activities that are outside of the originally approved scope of work. Funding options available to the applicant are described below.

Alternate Projects. An applicant may determine that the public welfare would not be best served by restoring a damaged facility or its function to the pre-disaster design. In this event, the applicant may use the Public Assistance grant for that facility for other purposes. For example, if an applicant decides not to repair a damaged school, it may use the grant for repair of the school as an alternate project grant to make improvements to an undamaged office building, or to purchase new school buses. Funds also may be used on more than one alternate project.

An applicant may request an alternate project in lieu of both small and large projects, but only for permanent restoration projects; funds for debris removal and emergency protective measures cannot be used for alternate projects. Funds for alternate projects are limited to 90 percent of the Federal share of the eligible costs that would have been associated with repairing the damaged facility to its pre-disaster design or to the actual costs of completing the alternate project, whichever is less. Funds for alternate projects cannot be used for operating costs or to meet the State or local share requirement on other public assistance projects or projects that utilize other Federal grants. In general, they may be used for capital projects such as facilities or equipment. Alternate projects for PNP applicants must be for facilities that would be eligible for assistance under Section 406 of the Stafford Act. Alternate project funds also may be used for certain hazard mitigation projects.

All alternate projects must be approved by FEMA ***prior to construction***. FEMA must ensure that the proposed project represents an appropriate use of funds and complies with applicable environmental and historic preservation laws.

Improved Projects. When performing restoration work on a damaged facility, an applicant may decide to use the opportunity to make improvements to the facility. For example, the applicant may decide to lay asphalt on a gravel road or replace a firehouse that originally had two bays with one that has three. Projects that incorporate such improvements are called improved projects. An applicant may request an improved project for either a small or large project. The improved facility must have the same function and at least the equivalent capacity as that of the pre-disaster facility. Funding for such projects is limited to the Federal share of the costs that would be associated with repairing or replacing the damaged facility to its pre-disaster design.

The applicant must obtain approval for an improved project from the State ***prior to construction***. Further, any improved project that results in a significant change from the pre-disaster configuration (that is, different location, footprint, function, or size) of the facility must also be approved by FEMA prior to construction to ensure completion of the appropriate environmental or historic review.

Appeals

The appeals process is the opportunity for applicants to request reconsideration of decisions regarding the provision of assistance. There are two levels of appeal. The first level appeal is to the RD. The second level appeal is to the EAD at FEMA Headquarters.

Typical appeals involve the following:

- an entity is not an eligible applicant;

- a facility, an item of work, or a project is not eligible for disaster assistance;
- approved costs are less than the applicant believes to be necessary to complete the work;
- a requested time extension was not granted; or
- a portion of the cost claimed for the work is not eligible.

The applicant must file an appeal with the State within 60 days of receipt of a notice of the action that is being appealed. The applicant must provide documentation to support the appeal. This documentation should explain why the applicant believes the original determination is wrong and the amount of adjustment being requested. The State will review the appeal documentation and request additional information if necessary. The State will then prepare a written recommendation on the merits of the appeal and forward that recommendation to FEMA within 60 days of its receipt of the appeal letter or receipt of additional information that it had requested.

The RD will review the appeal and within 90 days will take one of two actions:

- render a decision on the appeal and inform the State of the decision; or
- request additional information.

Normally, the applicant will have 60 days to provide any additional information, and the RD will provide a decision on the appeal within 90 days of receipt of that information. If the appeal is granted, the RD will take appropriate action, such as approving additional funding or sending a Project Officer to meet with the applicant to determine additional eligible funding.

If an appeal is denied by the RD, the applicant may submit a second appeal to the EAD. The applicant must submit the appeal to the State within 60 days of receiving the RD's denial. The State

must forward the appeal with a written recommendation to the RD within 60 days of receiving the applicant's letter. The RD will review the information provided with the appeal and request additional information if required. The appeal will then be forwarded with the recommendation for action to the EAD as soon as practicable.

The EAD will review the appeal and within 90 days will render a decision or request additional information from the applicant. In an unusual case involving highly technical issues, the EAD may request an independent scientific or technical analysis by a group or person having expertise in the subject matter of the appeal. Upon receipt of the information, the EAD shall render a determination on the appeal within 90 days. Any required actions, such as obligation or deobligation of funds, will be taken by the RD.

Closeout

The PA Program will be considered programmatically "closed" when all projects have been described and approved, appeals have been resolved, and funds have been obligated. This phase of the PA Program will end when there is a well-defined understanding of the total amount of Federal funds that will be obligated for the disaster.

Financial reconciliation of the grant occurs later, when FEMA and the State reach agreement that all applicable administrative actions related to the grant are complete and all program funds have been reconciled. At that point, all PA Program projects have been completed, the State has awarded all grant funds and submitted its final expenditure report to FEMA, and FEMA has adjusted the funding level for the program.

CHAPTER 4

SPECIAL CONSIDERATIONS

What Are Special Considerations?

FEMA uses the term “Special Considerations” to describe issues other than program eligibility that affect the scope of work and funding for a project. These issues include:

- floodplain management;
- insurance;
- hazard mitigation; and
- compliance with other Federal laws and regulations, such as those that address protection of the environment and historic preservation.

Each of these issues is described in greater detail later in this chapter.

Timely identification and resolution of Special Considerations issues prior to initiation of disaster-related work is critical to the effective delivery of the PA Program. If FEMA, the State, and the applicant fail to identify and address these issues expeditiously, the consequences listed below can result:

Loss of Funding. FEMA may be prevented from approving funds for a project, or FEMA may be required to deobligate funds after the initiation of a project.

Delays. Approval and obligation of funding may be delayed while Special Considerations issues are resolved. For example, a funding decision may be delayed while FEMA waits for an applicant to submit insurance information.

Legal Action. Citizens, advocacy groups, and others can file lawsuits to stop projects funded by FEMA.

Loss of Opportunity. Hazard mitigation measures typically are most effective when incorporated in the initial repair or replacement of the damaged facility. It is critical to identify Special Considerations issues early to capitalize on the opportunity.

Negative Publicity. All of the above create negative publicity for FEMA, the State, and the applicants.

Early identification and resolution of Special Considerations issues can prevent many of these effects.

The Special Considerations Process

Special Considerations are a factor in all phases of the recovery process, from the Preliminary Damage Assessment (PDA) through the completion of projects. Processing involves:

- collection of data;
- review of the data and coordination with the appropriate agencies; and
- documentation of the process and its results.

FEMA's objective is to resolve Special Considerations issues early and expeditiously, preventing the consequences described earlier. The PDA is the first step in identifying Special Considerations. PDA teams will collect Special Considerations information through observation and interviews with the local officials.

Once recovery operations are underway, the scoping process begins. This process includes:

- identification of potential issues;
- coordination with other agencies;

- establishment of procedures for addressing issues; and
- coordination among the PA Program staff to ensure that field personnel are aware of the issues and the procedures for addressing them.

Depending on the issues prevalent for a specific disaster, any or all of the following agencies or organizations may be consulted as part of this scoping process:

- State insurance commissioner's office;
- FEMA Hazard Mitigation Grants Program office (see the discussion of 404 Mitigation, on page 98);
- State Historic Preservation Office; and
- USACE, U.S. Fish and Wildlife Service (USFWS), and other Federal agencies.

The scoping process should result in some means for addressing issues, such as a clearance letter or memorandum of understanding with the appropriate agency.

The interface between the PAC and the applicant is the most critical element of the Special Considerations process. The PAC has the opportunity to interact with the applicant on several occasions, beginning with the Kickoff Meeting. The PAC:

- brings potential issues to the applicant's attention;
- works with the applicant to identify issues and obtain information that can lead to resolution;
- alerts Project Officers to potential issues with large projects;
- identifies projects for which a review is required and assigns the appropriate Specialist; and
- ensures that the appropriate review is completed by a Specialist and documented in the applicant's Case Management File.

The applicant must ensure that Special Considerations are noted on *PWs* for small projects. Additionally, the applicant can expedite the grant processing and approval by obtaining any information needed to resolve these considerations as early as possible.

Floodplain Management

The objectives of floodplain management are to:

- avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains; and
- to limit direct and indirect floodplain development wherever there is a practicable alternative site.

To accomplish these objectives, Executive Order (EO) 11988 requires Federal agencies to avoid the 100-year floodplain, unless there is no practicable alternative, or to mitigate the effect of potential flooding through such measures as elevating structures. Because many PA Program projects are located in floodplains, FEMA must monitor the approval of grants for compliance with these requirements. Specific floodplain management responsibilities are described in more detail below.

Flood Insurance Rate Maps

To meet its floodplain management responsibilities, FEMA must first determine if a project is located within a floodplain. For this purpose, FEMA uses the Flood Insurance Rate Maps (FIRMs) that are published to support the National Flood Insurance Program (NFIP). These maps, which are also used by community floodplain managers and the insurance industry, depict Special Flood Hazard Areas, which are areas subject to inundation by a 100-year flood (a flood having a 1 percent chance of occurrence in a given year). The maps also show 500-year floodplains (areas

subject to inundation by a flood having a 0.2 percent chance of occurrence in a given year), coastal high hazard areas, and Coastal Barrier Resources System units.

Floodplain Management Responsibilities

Federal floodplain management responsibilities are mandated by EO 11988 and EO 11990, and outlined in 44 CFR Part 9. 44 CFR Part 9 provides the following specific, 8-step process for conducting floodplain management reviews before approval of funding.

1. Determine the location and effect of the proposed action within a wetland or the 100-year floodplain.
2. Notify the public of the proposed action within a wetland or floodplain.
3. Identify and evaluate practicable alternatives, including alternative sites or actions outside the floodplain or wetland.
4. Identify the potential direct and indirect impacts associated with the proposed action.
5. Minimize potential adverse impacts of the proposed action.
6. Re-evaluate the proposed action and other practical alternatives based on steps 3, 4, and 5.
7. Inform the public of the final decision.
8. Implement the action.

This review is not required for projects where eligible damage is less than \$5,000. In addition, the review is not required for

Category A and B projects (emergency work), except for projects involving disposal of debris in Special Flood Hazard Areas.

For all other projects located within Special Flood Hazard Areas, FEMA must perform the review to determine if it is practicable to avoid restoration in the floodplain. If avoiding the floodplain is not practicable, FEMA must identify all effects to both the floodplain and to the facility and seek to minimize the adverse effects through mitigation (such as relocation or redesign).

Consideration of alternative sites is not required for projects over \$5,000 but less than \$25,000 that are located in Special Flood Hazard Areas. However, mitigation measures must be considered.

FEMA must perform floodplain management reviews for critical facilities located in any floodplain up to and including the 500-year floodplain. A critical facility is a structure that, if flooded, would present an immediate threat to life, public health, and safety. Critical facilities include hospitals, facilities that produce toxic materials, and emergency operations centers. FEMA may require mitigation of the hazard or relocation of a critical facility before agreeing to provide funding for restoration of the facility.

Insurance

In accordance with Section 312 of the Stafford Act, the PA Program cannot duplicate benefits, such as proceeds from an insurance policy. Therefore, FEMA is required to reduce the amount of assistance for eligible work by the amount of any actual or anticipated insurance proceeds available for that work. FEMA also must limit flood disaster assistance for insurable facilities in Special Flood Hazard Areas; Section 406(d) of the Stafford Act requires a reduction in assistance for such facilities if those facilities do not carry flood insurance or carry inadequate flood insurance (see page 96). Section 311 of the Stafford Act

requires an applicant to purchase and maintain insurance, where that insurance is reasonably available, as a condition for receiving disaster assistance. These criteria are discussed in more detail in the paragraphs that follow.

Applicants are required to provide all pertinent insurance information, policies, and statements of loss to FEMA as soon as possible. In addition, applicants must pursue payment under their insurance plans to maximize potential benefits or risk delays or loss of FEMA funding.

Items and facilities that typically are insured include:

- buildings;
- contents;
- equipment; and
- vehicles.

An applicant may have insurance coverage for other items, facilities, or types of work. It is critical that the applicant discuss all possible insurance coverages with the PAC.

General Property Insurance

FEMA uses the term “general property insurance” to describe all perils except for flood. This could include perils such as fire, wind, rain, and earthquakes. Coverage for these perils generally includes buildings, contents, personal property, and other items. Once the amount and availability of coverage have been determined, an appropriate reduction in eligible project costs can be made based on anticipated insurance proceeds. If an applicant has already received an insurance payment at the time of project approval, FEMA will review the settlement to determine if it is in accordance with the policy. FEMA may limit funding if the applicant’s policy provides coverage which should be pursued from the insurer.

The NFIP and Flood Insurance

Flood insurance is available through both the NFIP and private insurance companies. The extent of coverage available varies depending on the source of the insurance and factors such as exposure to flooding, location, and loss history due to flooding. When flood insurance is purchased from the NFIP, it is obtained separately for buildings and contents. A list of properties that are insurable under the NFIP is provided in 44 CFR Part 61.

Examples of insurable properties include buildings and contents, building additions, and detached garages. Examples of properties that are not covered by the NFIP include vehicles, pumping stations that do not qualify as buildings, water treatment plants that are primarily below ground, boat docks, swimming pools, and items that are stored but not normally located in basements.

Section 406(d) of the Stafford Act mandates a special reduction in the amount of public assistance funding for a structure that is:

- insurable under the NFIP;
- located in a Special Flood Hazard Area, as shown on a FIRM; and
- damaged by floodwaters.

For insurable structures that do not have flood insurance or carry inadequate flood insurance, FEMA will reduce eligible project costs by the lesser of:

- the maximum amount of insurance proceeds that could have been obtained from a standard NFIP flood insurance policy; or
- the value of the structure at the time of the disaster.

44 CFR Part 59.2 states that Federal financial assistance with respect to insurable buildings within an identified Special Flood Hazard Area shall not be provided in a sanctioned or non-

participating community. The requirement to reduce eligible costs is still enforced even if flood insurance is not available because the community is sanctioned or does not participate in the NFIP. There may be a limited exemption from this requirement for eligible PNP facilities when a community is sanctioned or not participating in the NFIP.

If flood insurance policies contain provisions for clean-up, debris removal, and demolition, FEMA must deduct proceeds for these activities from PA Program grants. While insurance policies typically do not pay for voluntary hazard mitigation items, they often cover upgrades necessary to comply with current codes and standards.

Eligible Costs for Insurable Facilities – All Disasters

Except in cases involving flood insurance reductions, any eligible work not covered by an insurance policy (that is, an uninsured loss) may be eligible for PA grant funding. The eligibility of these items is determined only after a review of the insurance policy and settlement by a Specialist. Generally, eligible uninsured losses may include the following items:

- deductible;
- depreciation; and
- costs in excess of an insurance policy's limits.

Insurance Purchase Requirements – All Disasters

As a condition for receiving public assistance for a facility, an applicant must obtain and maintain insurance to cover that facility for the hazard that caused the damage. Such coverage must, at a minimum, be in the amount of the estimated eligible project costs for that structure prior to any reduction. If the requirement to purchase insurance is not met, FEMA will not provide assistance for damage sustained in the current disaster. If the applicant does

not maintain insurance, FEMA will not provide any assistance for that facility in future disasters. An applicant is exempt from this requirement for:

- projects where the eligible damage is less than \$5,000; or
- facilities for which, in the determination of the State insurance commissioner, insurance is not reasonably available, adequate, and necessary. (This exemption does not apply to facilities insurable under the NFIP because insurance is both available and reasonable.)

The commitment by the applicant to purchase and maintain insurance must be documented and submitted to FEMA before project approval.

Hazard Mitigation

Hazard mitigation is defined as cost-effective action taken to prevent or reduce the threat of future damage to a facility. The applicant, FEMA, or the State may recommend that hazard mitigation measures be included in a *PW*. In some cases, FEMA may require that such actions be taken as part of a project. The costs of eligible hazard mitigation actions will be included in the overall funding of a project.

Difference Between Section 404 and Section 406 Hazard Mitigation Measures

The Stafford Act provides for two types of funding for hazard mitigation measures: Section 404 mitigation and Section 406 mitigation. The differences between these provisions are described in the table on page 99.

Section 404 hazard mitigation does not fall under the purview of the PA Program. Nevertheless, it is important to understand the

404 Mitigation	406 Mitigation
Separate program run by the State	Implemented through the PA Program
Structural measures and non-structural measures (such as planning, property acquisition, warning systems)	Structural measures
Throughout the State	Must apply to the damaged element of the facility
Program funds capped at 15% of total disaster funds spent in the State	No program-wide limits on funds

differences between the two programs. The following discussion pertains solely to Section 406 hazard mitigation. For more information on Section 404 hazard mitigation, local officials should contact the PAC, appropriate DFO staff, or the State.

Section 406 Hazard Mitigation

It is important to note that Section 406 hazard mitigation measures consist of work that is above and beyond the work required to return the damaged facility to its pre-disaster design. Upgrades required to meet current codes and standards, however, are not considered hazard mitigation measures for purposes of the PA Program and have different eligibility criteria. Also note that, under the PA Program, these measures can only be applied to the damaged element of a facility. This is particularly important when conducting repairs to a portion of a system. For example:

If floodwaters inundate a sanitary sewer, blocking manholes with sediment and damaging the manholes, cost-effective mitigation to prevent blockage of the

damaged manholes in future events may be eligible. However, work to improve any undamaged manholes that are part of the system is not eligible.

For hazard mitigation measures to be approved, the measures must be reviewed by FEMA staff to ensure eligibility, technical feasibility, environmental and historical compliance, and cost effectiveness. The considerations listed below may affect the determination of cost effectiveness.

- Hazard mitigation measures may amount to up to 15 percent of the total eligible cost of the eligible repair work on a particular project.
- Certain mitigation measures may be determined to be cost-effective as long as the mitigation measure does not exceed the cost of the eligible repair work on the project. (These measures are identified in Response and Recovery Policy Number 9526.1 dated August 13, 1998 and excerpted below.)
- For measures that exceed the costs of eligible repair work, the applicant must demonstrate through an acceptable benefit/cost analysis that the measure is cost effective.

The following list includes examples of Section 406 mitigation measures. The applicant, the State, or FEMA may propose such measures. In addition, FEMA may require mitigation measures as part of an approved project to ensure compliance with applicable laws, regulations, or policies.

- Relocation of facilities from hazardous locations:
 - Roads and bridges
 - Utilities
 - Buildings
- Slope stabilization to protect facilities:
 - Placement of riprap

- Installation of cribbing or retaining walls
- Installation of soil retention blankets
- Protection from high winds:
 - Installation of shutters to protect windows
 - Installation of hurricane clips
 - Strengthening anchoring and connections of roof-mounted equipment
- Floodproofing of buildings:
 - Use of flood-resistant materials
 - Elevation of mechanical equipment and utilities
 - Elevation of buildings
- Flood protection of bridges and culverts:
 - Use clear spans instead of multiple spans
 - Installation of cut-off walls or headwalls on culverts
 - Installation of riprap
- Seismic protection:
 - Bracing of overhead pipes and electrical lines
 - Anchoring non-structural elements such as parapets and veneers
 - Bracing interior walls and partitions
- Protection of utilities:
 - Use of disaster-resistant materials for power poles
 - Anchoring fuel tanks to prevent movement
 - Elevation of equipment, control panels, and electrical service to prevent flood damage

Other Federal Laws and Regulations

When providing funds under the PA Program, FEMA must consider a range of Federal laws and regulations that apply to the use of Federal funds. These laws and regulations generally require the funding agency to ensure compliance. The size and type of project generally determine the level of review that must be performed. Some of these laws and regulations and the means through which FEMA ensures that the PA Program complies with them are discussed below.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) requires every Federal agency to follow a specific planning process to ensure that agency decision-makers and local governments have considered, and the general public is fully informed about, the environmental consequences of a Federal action. This review and consultation process is used to evaluate the impact a project and its alternatives may have on the environment. The process must be completed prior to obligating funds and beginning work. FEMA's regulations regarding NEPA can be found in 44 CFR Part 10.

NEPA does not require that FEMA limit the impact of public assistance projects on the environment; nor does it require FEMA to fund only the alternative that has the least environmental impact. However, it does require that the decision to fund a project be made in an informed manner and involve the relevant stakeholders.

The review process required by NEPA, where applicable, is usually the vehicle through which FEMA addresses other environmental laws and regulations.

Statutory Exclusions. FEMA is provided with statutory exclusions under Section 316 of the Stafford Act. These exclusions exempt certain actions from the NEPA review process and generally include:

- debris removal, including clearance of roads and demolition of unsafe structures;
- emergency protective measures, such as the construction of temporary bridges and other activities necessary to reduce immediate threats to life, property, and public health and safety; and
- repair or restoration projects that do not affect the location, footprint, function, and size of the original facility.

It should be noted, however, that compliance with other individual laws, such as the Endangered Species Act, the National Historic Preservation Act, and the Clean Water Act, is still required, even when a project is excluded from NEPA review.

If an action is not statutorily excluded, the appropriate level of NEPA review must be determined. These levels are described in the following paragraphs.

Categorical Exclusions. Categorical exclusions include actions that, through experience, FEMA has found typically will have little or no environmental impact. Categorical exclusions are defined in 44 CFR 10.8(d). Examples include minor improvements or minor hazard mitigation measures at existing facilities, such as placing riprap at a culvert outlet to control erosion. If there are unresolved extraordinary circumstances, such as the presence of protected natural or cultural resources, the proposed action cannot be categorically excluded, and an Environmental Assessment would be required.

Environmental Assessments and Impact Statements. The next two levels of NEPA review are an Environmental Assessment and an Environmental Impact Statement.

An Environmental Assessment is defined as a concise public document that serves to provide sufficient evidence and analysis regarding the significance of the environmental impacts of the proposed action. This assessment includes alternatives to aid in decision making and concludes with one of two findings: either a Finding of No Significant Impact or a Notice of Intent to prepare an Environmental Impact Statement.

An Environmental Impact Statement is required when significant environmental impacts are anticipated. It is a detailed analysis and evaluation of all the impacts of the proposed action and all reasonable alternatives, and is required when significant environmental impacts are anticipated. This document usually provides more detailed and rigorous analyses than the Environmental Assessment and provides for formal public involvement. The Environmental Impact Statement concludes with a Record of Decision that provides an explanation of the reasons for selecting a particular action.

Clean Water Act

Under Section 404 of the Clean Water Act, the USACE is responsible for issuing permits for the discharge of dredged materials or fill into the waters of the United States. Under this portion of the Clean Water Act, the applicant must obtain a permit in any situation where dredging or filling is a component of the project.

Wetlands are considered part of the waters of the United States and are subject to the provisions of the Clean Water Act. Some wetlands, such as marshes and riverine wetlands, are easy to recognize. Other sites, such as forested wetlands and agricultural drainage ditches, are more difficult to identify, and some areas that are considered wetlands may not actually be wet for much of the year.

Facilities and projects that may involve the Clean Water Act include:

- bridges, culverts, or outfall structures;
- levees;
- irrigation works;
- channel alignment and stream bank erosion control;
- debris removal in streams;
- shore protective measures;
- projects involving the placement of fill, such as relocation of roads and buildings; and
- construction of water and wastewater treatment plants.

Clean Air Act

Air quality may be affected by projects that are typically funded under the PA Program. Examples include:

- debris disposal through methods such as burning;
- collection and disposal of appliances that contain chloro-fluorocarbons;
- the demolition of damaged structures, which can release dust or harmful substances, such as asbestos, into the air; and
- projects that involve converting a mechanical or electrical system to a system that relies on combustion.

Compliance with the requirements is a condition of grant approval.

Coastal Barrier Resources Act

The Coastal Barrier Resources Act (CBRA) restricts Federal expenditures and financial assistance that encourage development

of coastal barriers so that damage to property, fish, wildlife, and other natural resources associated with the coastal barrier is minimized. Coastal barriers are located along the Atlantic and Gulf coasts and along the Great Lakes. They are identified on FIRMs as Coastal Barrier Resources System (CBRS) units.

Debris removal and emergency protective measures in designated CBRS units may be eligible for public assistance provided the actions eliminate the immediate threat to lives, public health and safety and protect improved property. Advanced consultation with the USFWS is not required before approval of emergency measures.

However, FEMA must consult with the USFWS to allow the USFWS the opportunity to provide written comments before permanent work funding is approved. The following types of publicly owned facilities may be eligible for permanent work funding:

- essential links in a larger system;
- improvements to an existing channel;
- repair of existing energy facilities that are functionally dependent on a coastal location; and
- other existing roads, structures, or facilities that are consistent with the purposes of CBRA;

Certain PNP facilities that meet the restrictions of CBRA and the PA Program may be eligible for assistance. Examples include electric or gas utilities or educational facilities used for scientific research.

Improved projects that expand a facility are not eligible in CBRS units except in a few limited cases. Alternate projects are not eligible.

An existing facility is defined as a publicly owned or operated facility on which the start of construction took place on or before

October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility. If a unit was added to CBRS at a later date, that date may be substituted for the October 18, 1982, date.

Resource Conservation and Recovery Act

Although debris removal is statutorily exempted from NEPA, it is nonetheless subject to other laws, such as the Resource Conservation and Recovery Act, which requires safe disposal of waste materials, promotes the recycling of waste materials, and encourages cooperation with local agencies. The act applies to disposal of both storm-generated debris and demolition debris and is of particular concern when hazardous materials may be present.

Endangered Species Act

This legislation prohibits Federal actions that cause unnecessary harm to species listed as threatened or endangered the destruction or adverse modification of the habitat for these species. Endangered species include mammals, fish, birds, reptiles, and amphibians, as well as plants and insects.

If a project involves the known habitat of a threatened or endangered species, FEMA must consult with the USFWS and the National Marine Fisheries Service before approving funding for that project. Compliance issues may arise with projects involving undisturbed sites, such as relocations, but could also arise with relatively minor actions. For example:

If a culvert replacement must be performed on a stream that serves as the habitat of an endangered fish species, the construction could adversely affect the life cycle of that fish. The presence of the fish would not necessarily prevent the replacement but may necessitate certain constraints, such as accomplishing the work outside of the breeding season.

There are over 900 species currently listed as threatened or endangered. Therefore, it is important to consult with the USFWS to determine which species inhabit the project areas. In some cases, FEMA may establish a memorandum of understanding with the USFWS at the beginning of the disaster recovery process to address projects in areas known to have endangered species.

National Historic Preservation Act

The National Historic Preservation Act (NHPA) requires a Federal agency to consider the effects of its projects on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places. The agency funding the undertaking is required to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment regarding that undertaking. In practice, the council rarely comments on individual Federal undertakings; it does, however, monitor the overall performance of Federal agencies in their compliance with NHPA.

Historic properties include districts, buildings, structures, objects, landscapes, archaeological sites, and traditional cultural properties that are included in, or eligible for inclusion in, the National Register of Historic Places. These properties are not just old buildings or well-known historic sites, but places important in local, State, or national history. Facilities as diverse as bridges and water treatment plants may be considered historic.

The National Register of Historic Places is a list of recognized historic properties. However, this list is not complete, and States may have additional properties with historic significance.

FEMA's Historic Preservation Program. Many public assistance projects have the potential to affect historic properties. These projects include:

- repair and restoration of historic structures;

- demolition or removal of historic structures;
- repair, restoration, and demolition projects in historic districts; and
- improved, alternate, or relocated projects that affect undisturbed areas that may contain archeological sites or other historic properties.

Under NHPA, FEMA must:

- identify historic properties;
- evaluate the effects of PA Program projects on historic properties;
- consult with the State Historic Preservation Office, the Advisory Council on Historic Preservation, and other interested parties, such as Native American tribes; and
- obligate funding only after completing the historic review process.

Through the use of programmatic agreements, FEMA has delegated the identification and evaluation tasks to State Historic Preservation Offices in many States.

Coastal Zone Management Act

If a proposed project is located in an area covered by a coastal zone management plan, it must comply with the requirements of that plan.

Farmland Protection Policy Act

If a proposed project causes irreversible conversion of farmland to non-agricultural use, the lost acreage must be evaluated using NRCS procedures.

Fish and Wildlife Coordination Act

If a proposed project will destroy wildlife habitat or modify a natural stream or body of water, this act requires an evaluation of that action on fish and wildlife. NEPA, when required, addresses these issues.

Wild and Scenic Rivers Act

If a proposed project is located on a river designated as wild and scenic, it must be reviewed for compliance with this law.

Executive Orders

In addition to the laws described above, several EOs issued by the President also affect PA Program projects. The EOs that most frequently affect the PA Program are described below.

EO 11988. Requires Federal agencies to undertake certain responsibilities for floodplain management. FEMA's procedures for complying with this EO are outlined in 44 CFR Part 9, and are described on page 93 of this guide.

EO 11990. Outlines the protection of wetlands and requires a planning process that considers alternatives and evaluates impacts to wetlands. The process for complying with this EO is similar to that for complying with EO 11988 (see page 93) and is outlined in 44 CFR Part 9.

EO 12699. Requires that Federally assisted or regulated construction of new buildings must use appropriate seismic design and construction standards and practices. This EO applies to construction of new buildings for alternate or improved projects, the replacement of seriously damaged or destroyed buildings, and new additions to existing structures.

EO 12898. Requires Federal agencies to evaluate actions for disproportionately high and adverse effects on minority or low-income populations and to find ways to avoid or minimize these impacts where possible. It does not typically apply to in-kind repair or replacement of facilities under the PA Program. However, it may affect funding for improved, alternate, and relocated projects and certain hazard mitigation measures. Field personnel should identify any neighborhoods or communities with minority populations or low-income populations in the vicinity of these types of projects.

CHAPTER 5

PROJECT MANAGEMENT

Project management begins when a disaster occurs and does not end until an applicant has received final payment for the project. Good project management ensures successful recovery from the disaster, expedited payment of funds, and more efficient close-outs of PA Program grants.

Record Keeping

It is critical that the applicant establish and maintain accurate records of events and expenditures related to disaster recovery work. The information required for documentation describes the “who, what, when, where, why, and how much” for each item of disaster recovery work. The applicant should have a financial and record keeping system in place that can be used to track these elements. The importance of maintaining a complete and accurate set of records for each project cannot be over-emphasized. Good documentation facilitates the project formulation, validation, approval, and funding processes.

All of the documentation pertaining to a project should be filed with the corresponding *PW* and maintained by the applicant as the permanent record of the project. These records become the basis for verification of the accuracy of project cost estimates during validation of small projects, reconciliation of costs for large projects, and audits.

Applicants should begin the record keeping process before a disaster is declared by the President. To ensure that work performed both before and after a disaster declaration is well documented, potential applicants should:

- designate a person to coordinate the compilation and filing of records;

- establish a file for each site where work has been or will be performed; and
- maintain accurate disbursement and accounting records to document the work performed and the costs incurred.

The Federal Office of Management and Budget requires grant recipients to maintain financial and program records on file for three years following final payment. Records of grant recipients may be subject to the provisions of the Single Audit Act, as described on page 117 of this guide. Applicants may refer to the Applicant Handbook, FEMA 323, for additional information regarding record-keeping.

Time Limits

There are time limits established for the completion of eligible work. These are set by regulation and are measured from the declaration date of the major disaster or emergency. The initial deadlines are established according to the type of work as shown in the following table:

Completion Deadlines	
Type of Work	Months
Debris Clearance	6
Emergency Work	6
Permanent Work	18

The State may grant extensions of the above deadlines in situations of extenuating circumstances. For debris clearance and emergency protective measures, an additional six months may be granted. For permanent restoration work, an additional 30 months may be granted. Requests by applicants for time extensions should include identification of the project by *PW* number, the

dates and provisions of any previous extensions granted for the particular project, a detailed justification of the delay, and a projected completion date. The justification should be based on extenuating circumstances or unusual project requirements beyond the control of the applicant. FEMA may review the State's actions on time extensions on a periodic basis to ensure compliance with the regulations.

If an applicant requests a time extension beyond the limit of the State's authority, the State must submit the request to the RD for approval. Information to be contained in the request is the same as in a request submitted for State approval. The RD will make a determination as to whether some or all of the requested extension should be granted and will inform the State in writing. The RD has authority to grant extensions appropriate to the situation. The RD may impose requirements upon the State to ensure that the project will be completed within the approved time limit.

The applicant will be reimbursed only for those costs incurred up to the latest approved completion date for a particular project. However, the project must still be completed for any funding to be eligible for that project.

Changes in Scope of Work and Costs

During the performance of work on a project, the applicant may discover hidden damage, additional work that is necessary to properly complete the project, or that certain costs are higher than those used to make the original estimate for the *PW*. Delays in the work schedule also may increase costs.

For large projects, when a change in scope or a need for additional funding is discovered, the applicant should notify the State as soon as possible. The assumption should not be made that such costs can be reported at the end of the project and that the additional funds will be approved automatically. The request should contain

justification for the eligibility of the additional work or costs. If additional damage to the facility is involved, it may be necessary to show how that damage is disaster-related. The State will forward the request to FEMA with a written recommendation. To determine eligibility, FEMA and the State, in cooperation with the local representatives, may conduct a site visit. The RD will render a decision and notify the State either with an amended *PW* for additional funding or a written denial of the request.

Small projects are handled differently. Cost overruns are not handled on a project-by-project basis; rather, the applicant may request supplemental funding for a net cost overrun on all small projects by submitting an appeal through the State to FEMA. An appeal should be submitted only when the total costs for all small projects significantly exceed the total cost approved for all small projects. The appeal must be submitted within 60 days of the completion of all of that applicant's small projects. The appeal must include documentation of actual costs of all of the projects, including projects with underruns as well as those with overruns.

Except when an appeal is to be submitted, cost documentation for small projects does not need to be submitted to FEMA. The State need only certify that all work was completed in accordance with the approved *PWs*.

Progress Reports

Progress reports are critical to ensuring that FEMA and the State have up-to-date information on PA Program grants. Reporting requirements for the PA Program generally concentrate on large projects. Recipients of assistance should check with their State to determine the particular reporting requirements.

The State will submit reports quarterly to the RD for large projects for which a final payment has not been made. The date of the first report will be determined jointly by the State and the DRM,

depending on the circumstances at the time. The progress report will describe:

- the status of the project, such as “in design”, or “under construction”;
- time extensions granted, if any;
- a projected completion date; and
- any problems or circumstances that could delay the project or result in noncompliance with the conditions of the FEMA approval.

As final payment is made on each large project, the project may be dropped from the report.

The requirements for small projects vary depending upon the practices of each State.

FEMA has no reporting requirements for applicants, but the State is expected to impose some reporting requirements on applicants so that it can prepare quarterly reports. The format in which the applicants submit project reports to the State will be determined by the State.

Audits

Public assistance grant recipients are required to comply with the provisions set forth under the Single Audit Act of 1984 (Public Law 98-502), as amended in 1996. The act requires grant recipients expending \$300,000 or more in Federal funds in a fiscal year to perform a single audit.

Even though a single audit must be performed, grant recipients also are subject to additional audits by the FEMA Office of the Inspector General and State auditors for items not covered by the single audit. Specific documentation and procedures are based on

the requirements of the Federal Office of Management and Budget whereby grant recipients must maintain financial and program records for three years following final payment.

Typically, applicants will be informed of audit requirements during the Applicants' Briefing. Any questions after the briefing regarding the single audit, or audits in general, should be directed to the appropriate State official or FEMA's Office of the Inspector General in Washington, D.C.

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Appendix A

Local Officials Disaster Response List

Local Officials Disaster Response List

If a disaster is beyond State and local capabilities and resources for effective response, the President may declare a major disaster or emergency. This measure makes extensive Federal assistance available, which imposes special obligations on State and local officials. The sequence of events may vary, depending upon the particular disaster.

Sequence of Events

- ☐ Disaster occurs.
- ☐ Local response – emergency operations center activation – declaration of state of emergency.
- ☐ Continue emergency work – maintain documentation (labor, equipment, materials, contracts).
- ☐ Compile initial estimated damage. Report to the State emergency management agency.
- ☐ Evaluate needs and request State/Federal assistance.
- ☐ State/Federal survey of need – Preliminary Damage Assessment.
- ☐ Governor's request for Federal assistance.
- ☐ Presidential declaration.
- ☐ Designate applicant's agent.
- ☐ Attend Applicants' Briefing – submit *Request for Public Assistance*.

- ☐ Kickoff Meeting with Public Assistance Coordinator – discuss project formulation.
- ☐ Prepare *Project Worksheets* – work with the Public Assistance Coordinator.
- ☐ Address applicable Special Considerations (floodplain management, insurance, hazard mitigation, and compliance with environmental and historic preservation laws).
- ☐ Complete application for Federal funds.
- ☐ Maintain required documentation (labor, equipment, materials, contracts).
- ☐ Receive payment of small projects - Federal share and possibly State share.
- ☐ Complete approved disaster work within time allowed.
- ☐ Request final inspections.
- ☐ Submit documents for final inspection, program review, and close out.
- ☐ Receive reimbursement – final payment on large projects.
- ☐ Keep all documentation for three years after applicant closeout.

Appendix B

“Robert T. Stafford Disaster Relief and Emergency Assistance Act”

42 U.S.C. § 5121 et seq.

(As of September 1, 1999)

APPENDIX B

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UNITED STATES CODE
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 68 - DISASTER RELIEF

**TITLE I - FINDINGS, DECLARATIONS, AND
DEFINITIONS**

{101} §5121. Congressional findings and declarations

(a) The Congress hereby finds and declares that—

(1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and

(2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity; special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.

(b) It is the intent of the Congress, by this chapter, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by—

(1) revising and broadening the scope of existing disaster relief programs;

(2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;

- (3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;
- (4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;
- (5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations; and
- (6) providing Federal assistance programs for both public and private losses sustained in disasters
- (7) Repealed. Pub.L. 100-707, Title I, 103(a)(1), Nov. 23, 1988, 102 Stat. 4689

{102} §5122. Definitions

As used in this chapter—

- (1) Emergency—"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.
- (2) Major disaster—"Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to

supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) “United States” means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(4) “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(5) “Governor” means the chief executive of any State.

(6) “Local government” means (A) any county, city, village, town, district, or other political subdivision of any State, any Indian tribe or authorized tribal organization, or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

(7) “Federal agency” means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(8) Public facility—“Public facility” means the following facilities owned by a State or local government:

(A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.

(B) Any non-Federal-aid street, road, or highway.

(C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.

(D) Any park.

(9) Private nonprofit facility—"Private nonprofit facility" means private nonprofit educational, utility, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled), other private nonprofit facilities which provide essential services of a governmental nature to the general public, and facilities on Indian reservations as defined by the President.

TITLE II - DISASTER PREPAREDNESS ASSISTANCE

{201} §5131. Federal and State disaster preparedness program

(a) Utilization of services of other agencies. The President is authorized to establish a program of disaster preparedness that utilizes services of all appropriate agencies and includes—

(1) preparation of disaster preparedness plans for mitigation, warning, emergency operations, rehabilitation, and recovery;

(2) training and exercises;

(3) postdisaster critiques and evaluations;

(4) annual review of programs;

(5) coordination of Federal, State, and local preparedness programs;

(6) application of science and technology;

(7) research.

(b) Technical assistance for development of plans and programs. The President shall provide technical assistance to the States in developing comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance, and mitigation; for assistance to individuals, businesses, and State and local governments following such disasters; and for recovery of damaged or destroyed public and private facilities.

(c) Grants to states for development of plans and programs. Upon application by a State, the President is authorized to make grants, not to exceed in the aggregate to such State \$250,000, for the development of plans, programs, and capabilities for disaster preparedness and prevention. Such grants shall be applied for within one year from May 22, 1974. Any State desiring financial assistance under this section shall designate or create an agency to plan and administer such a disaster preparedness program, and shall, through such agency, submit a State plan to the President, which shall—

(1) set forth a comprehensive and detailed State program for preparation against and assistance following, emergencies and major disasters, including provisions for assistance to individuals, businesses, and local governments; and

(2) include provisions for appointment and training of appropriate staffs, formulation of necessary regulations and procedures and conduct of required exercises.

(d) Grants for improvement, maintenance, and updating of State plans. The President is authorized to make grants not to exceed 50 per centum of the cost of improving, maintaining and updating State disaster assistance plans, including evaluations of natural

hazards and development of the programs and actions required to mitigate such hazards; except that no such grant shall exceed \$50,000 per annum to any State.

{202} §5132. Disaster warnings

(a) Readiness of federal agencies to issue warnings to state and local officials. The President shall insure that all appropriate Federal agencies are prepared to issue warnings of disasters to State and local officials.

(b) Technical assistance to state and local governments for effective warnings. The President shall direct appropriate Federal agencies to provide technical assistance to State and local governments to insure that timely and effective disaster warning is provided.

(c) Warnings to governmental authorities and public endangered by disaster. The President is authorized to utilize or to make available to Federal, State, and local agencies the facilities of the civil defense communications system established and maintained pursuant to section 5196(c) of this title, or any other Federal communications system for the purpose of providing warning to governmental authorities and the civilian population in areas endangered by disasters.

(d) Agreements with commercial communications systems for use of facilities. The President is authorized to enter into agreements with the officers or agents of any private or commercial communications systems who volunteer the use of their systems on a reimbursable or nonreimbursable basis for the purpose of providing warning to governmental authorities and the civilian population endangered by disasters.

TITLE III - MAJOR DISASTER AND EMERGENCY ASSISTANCE ADMINISTRATION

{301} §5141. Waiver of administrative conditions

Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

§5142. Repealed.

Pub.L. 100-707, Title I, 105(a)(2), Nov. 23, 1988, 102 Stat. 4691

{302} §5143. Coordinating officers

(a) Appointment of Federal coordinating officer. Immediately upon his declaration of a major disaster or emergency, the President shall appoint a Federal coordinating officer to operate in the affected area.

(b) Functions of federal coordinating officer. In order to effectuate the purposes of this chapter, the Federal coordinating officer, within the affected area, shall—

(1) make an initial appraisal of the types of relief most urgently needed;

(2) establish such field offices as he deems necessary and as are authorized by the President;

(3) coordinate the administration of relief, including activities of the State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, which agree to operate under his advice or direction, except that nothing contained in this chapter shall limit or in any way affect the responsibilities of the American National Red Cross under the Act of January 5, 1905, as amended (33 Stat. 599) [36 U.S.C. 1 et seq.]; and

(4) take such other action, consistent with authority delegated to him by the President, and consistent with the provisions of this chapter, as he may deem necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.

(c) State coordinating officer. When the President determines assistance under this chapter is necessary, he shall request that the Governor of the affected State designate a State coordinating officer for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government.

{303} §5144. Emergency support teams

The President shall form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. Such emergency support teams shall assist the Federal coordinating officer in carrying out his responsibilities pursuant to this chapter. Upon request of the President, the head of any Federal agency is directed to detail to temporary duty with the emergency support teams on either a reimbursable or nonreimbursable basis, as is determined necessary by the President, such personnel within the administrative jurisdiction of the head of the Federal agency as the President may need or believe to be useful for carrying out the functions of the emergency support teams, each such detail to be without loss of seniority, pay, or other employee status.

§5145. Repealed.

Pub.L. 100-707, Title I, 105(d), Nov. 23, 1988, 102 Stat. 4691

§5146. Repealed.

Pub.L. 100-707, Title I, 105(d), Nov. 23, 1988, 102 Stat. 4691

{304} §5147. Reimbursement of federal agencies

Federal agencies may be reimbursed for expenditures under this chapter from funds appropriated for the purposes of this chapter. Any funds received by Federal agencies as reimbursement for services or supplies furnished under the authority of this chapter shall be deposited to the credit of the appropriation or appropriations currently available for such services or supplies.

{305} §5148. Nonliability of Federal Government

The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this chapter.

{306} §5149. Performance of services

(a) Utilization of services or facilities of state and local governments. In carrying out the purposes of this chapter, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government.

(b) Appointment of temporary personnel, experts, and consultants; acquisition, rental, or hire of equipment, services, materials and supplies. In performing any services under this chapter, any Federal agency is authorized—

(1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of Title 5 governing appointments in competitive service;

(2) to employ experts and consultants in accordance with the provisions of section 3109 of such Title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such Title relating to classification and General Schedule pay rates; and

(3) to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President.

{307} §5150. Use of local firms and individuals

In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency. This section shall not be considered to restrict the use of Department of Defense resources in the provision of major disaster assistance under this chapter.

{308} §5151. Nondiscrimination in disaster assistance

(a) Regulations for equitable and impartial relief operations. The President shall issue, and may alter and amend, such regulations as may be necessary for the guidance of personnel carrying out Federal assistance functions at the site of a major disaster or emergency. Such regulations shall include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.

(b) Compliance with regulations as prerequisite to participation by other bodies in relief operations. As a condition of participation in the distribution of assistance or supplies under this chapter or of receiving assistance under this chapter, governmental bodies and other organizations shall be required to comply with regulations relating to nondiscrimination promulgated by the President, and such other regulations applicable to activities within an area affected by a major disaster or emergency as he deems necessary for the effective coordination of relief efforts.

{309} §5152. Use and coordination of relief organizations

(a) In providing relief and assistance under this chapter, the President may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services, housing and essential facilities, whenever the President finds that such utilization is necessary.

(b) The President is authorized to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations under which the disaster relief activities of such organizations may be coordinated by the Federal coordinating officer whenever such organizations are engaged in providing relief during and after a major disaster or emergency. Any such agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination promulgated by the President under this chapter, and such other regulation as the President may require.

{310} §5153. Priority to certain applications for public facility and public housing assistance

(a) Priority. In the processing of applications for assistance, priority and immediate consideration shall be given by the head of the appropriate Federal agency, during such period as the President shall prescribe, to applications from public bodies situated in areas affected by major disasters under the following Acts:

(1) The United States Housing Act of 1937 [42 U.S.C.1437 et seq.] for the provision of low-income housing.

(2) Section 462 of Title 40 [Section 702 of the Housing Act of 1954, 42 U.S.C. 462] for assistance in public works planning.

(3) The Community Development Block Grant Program under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(4) Section 1926 of Title 7 [Section 306 of the Consolidated Farm and Rural Development Act of 1965, 7 U.S.C. 1926].

(5) The Public Works and Economic Development Act of 1965 [42 U.S.C. 3121 et seq.].

(6) The Appalachian Regional Development Act of 1965.

(7) The Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.].

(b) Obligation of certain discretionary funds. In the obligation of discretionary funds or funds which are not allocated among the States or political subdivisions of a State, the Secretary of Housing and Urban Development and the Secretary of Commerce shall give priority to applications for projects for major disaster areas.

{311} §5154. Insurance

(a) Applicants for replacement of damaged facilities.

(1) Compliance with certain regulations. An applicant for assistance under section 5172 of this title (relating to repair, restoration, and replacement of damaged facilities), section 5189 of this title (relating to simplified procedure) or section 3233 of this title shall comply with regulations prescribed by the President to assure that, with respect to any property to be replaced, restored, repaired, or constructed with such assistance, such types and extent of insurance will be obtained and maintained as may be reasonably available, adequate, and necessary, to protect against future loss to such property.

(2) Determination. In making a determination with respect to availability, adequacy, and necessity under paragraph (1), the President shall not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner responsible for regulation of such insurance.

(b) Maintenance of insurance. No applicant for assistance under section 5172 of this title (relating to repair, restoration, and replacement of damaged facilities), section 5189 of this title (relating to simplified procedure), or section 3233 of this title may receive such assistance for any property or part thereof for which the applicant has previously received assistance under this chapter unless all insurance required pursuant to this section has been obtained and maintained with respect to such property. The requirements of this subsection may not be waived under section 5141 of this title.

(c) State acting as self-insurer. A State may elect to act as a self-insurer with respect to any or all of the facilities owned by the State. Such an election, if declared in writing at the time of acceptance of assistance under section 5172 or 5189 or 3233 of this title or subsequently and accompanied by a plan for self-insurance which is satisfactory to the President, shall be deemed compliance with subsection (a) of this section. No such self-insurer may receive assistance under section 5172 or 5189 of this title for any property or part thereof for which it has previously received assistance under this chapter, to the extent that insurance for such property or part thereof would have been reasonably available.

§ 5154a. Prohibited flood disaster assistance.

(a) General prohibition. Notwithstanding any other provision of law, no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property.

(b) Transfer of property.

(1) Duty to notify. In the event of the transfer of any property described in paragraph (3), the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(A) obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(B) maintain flood insurance in accordance with applicable Federal law with respect to such property. Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(2) Failure to notify. If a transferor described in paragraph (1) fails to make a notification in accordance with such paragraph and, subsequent to the transfer of the property:

(A) the transferee fails to obtain or maintain flood insurance in accordance with applicable Federal law with respect to the property;

(B) the property is damaged by a flood disaster; and

(C) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

(3) Property described. For purposes of paragraph (1), a property is described in this paragraph if it is personal, commercial, or residential property for which Federal

disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

(c) [Omitted.]

(d) Definition. For purposes of this section, the term “flood disaster area” means an area with respect to which:

(1) the Secretary of Agriculture finds, or has found, to have been substantially affected by a natural disaster in the United States pursuant to section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)); or

(2) the President declares, or has declared, the existence of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 et seq.), as a result of flood conditions existing in or affecting that area.

(e) Effective date. This section and the amendments made by this section [adding this section and amending 42 USCS § 4012a(a)] shall apply to disasters declared after September 23, 1994.

{312} §5155. Duplication of benefits

(a) General prohibition. The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.

(b) Special rules.

(1) Limitation. This section shall not prohibit the provision of Federal assistance to a person who is or may be entitled to receive benefits for the same purposes from another source if such person has not received such other benefits by the time of application for Federal assistance and if such person agrees to repay all duplicative assistance to the agency providing the Federal assistance.

(2) Procedures. The President shall establish such procedures as the President considers necessary to ensure uniformity in preventing duplication of benefits.

(3) Effect of partial benefits. Receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided.

(c) Recovery of duplicative benefits. A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source. The agency which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with chapter 37 of Title 31 relating to debt collection, when the head of such agency considers it to be in the best interest of the Federal Government.

(d) Assistance not income. Federal major disaster and emergency assistance provided to individuals and families under this chapter, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs.

{313} §5156. Standards and reviews

The President shall establish comprehensive standards which shall be used to assess the efficiency and effectiveness of Federal major disaster and emergency assistance programs administered under this chapter. The President shall conduct annual reviews of the activities of Federal agencies and State and local governments in major disaster and emergency preparedness and in providing major disaster and emergency assistance in order to assure maximum coordination and effectiveness of such programs and consistency in policies for reimbursement of States under this chapter.

{314} §5157. Penalties

(a) Misuse of funds. Any person who knowingly misapplies the proceeds of a loan or other cash benefit obtained under this chapter shall be fined an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit.

(b) Civil enforcement. Whenever it appears that any person has violated or is about to violate any provision of this chapter, including any civil penalty imposed under this chapter, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in an appropriate United States district court.

(c) Referral to Attorney General. The President shall expeditiously refer to the Attorney General for appropriate action any evidence developed in the performance of functions under this chapter that may warrant consideration for criminal prosecution.

(d) Civil penalty. Any individual who knowingly violates any order or regulation issued under this chapter shall be subject to a civil penalty of not more than \$5,000 for each violation.

{315} §5158. Availability of materials

The President is authorized, at the request of the Governor of an affected State, to provide for a survey of construction materials needed in the area affected by a major disaster on an emergency basis for housing repairs, replacement housing, public facilities repairs and replacement, farming operations, and business enterprises and to take appropriate action to assure the availability and fair distribution of needed materials, including, where possible, the allocation of such materials for a period of not more than one hundred and eighty days after such major disaster. Any allocation program shall be implemented by the President to the extent possible, by working with and through those companies which traditionally supply construction materials in the affected area. For the purposes of this section “construction materials” shall include building materials and materials required for repairing housing, replacement housing, public facilities repairs and replacement, and for normal farm and business operations.

{316} §5159. Protection of environment

An action which is taken or assistance which is provided pursuant to section 5170a, 5170b, 5172, 5173 or 5192 of this title, including such assistance provided pursuant to the procedures provided for in section 5189 of this title, which has the effect of restoring a facility substantially to its condition prior to the disaster or emergency, shall not be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852) [42 U.S.C. 4321 et seq.]. Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 to other Federal actions taken under this chapter or under any other provisions of law.

{317} §5160. Recovery of assistance

(a) Party liable. Any person who intentionally causes a condition for which Federal assistance is provided under this chapter or under any other Federal law as a result of a declaration of a major disaster or emergency under this chapter shall be liable to the United States for the reasonable costs incurred by the United States in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such person which caused such condition. Such action for reasonable costs shall be brought in an appropriate United States district court.

(b) Rendering of care. A person shall not be liable under this section for costs incurred by the United States as a result of actions taken or omitted by such person in the course of rendering care or assistance in response to a major disaster or emergency.

{318} §5161. Audits and investigations

(a) In general. Subject to the provisions of chapter 75 of Title 31, relating to requirements for single audits, the President shall conduct audits and investigations as necessary to assure compliance with this chapter, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.

(b) Access to records. For purposes of audits and investigations under this section, the President and Comptroller General may inspect any books, documents, papers, and records of any person relating to any activity undertaken or funded under this chapter.

(c) State and local audits. The President may require audits by State and local governments in connection with assistance under this chapter when necessary to assure compliance with this chapter or related regulations.

{319} §5162. Advance of Non-Federal Share

(a) In general. The President may lend or advance to an eligible applicant or a State the portion of assistance for which the State is responsible under the cost-sharing provisions of this chapter in any case in which—

(1) the State is unable to assume its financial responsibility under such cost-sharing provisions—

(A) with respect to concurrent, multiple major disasters in a jurisdiction, or

(B) after incurring extraordinary costs as a result of a particular disaster; and

(2) the damages caused by such disasters or disaster are so overwhelming and severe that it is not possible for the applicant or the State to assume immediately their financial responsibility under this chapter.

(b) Terms of loans and advances.

(1) In general. Any loan or advance under this section shall be repaid to the United States.

(2) Interest. Loans and advances under this section shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

(c) Regulations. The President shall issue regulations describing the terms and conditions under which any loan or advance authorized by this section may be made.

{320} §5163. Limitation on use of sliding scales

No geographic area shall be precluded from receiving assistance under this chapter solely by virtue of an arithmetic formula or sliding scale based on income or population.

{321} §5164. Rules and regulations

The President may prescribe such rules and regulations as may be necessary and proper to carry out the provisions of this chapter, and may exercise, either directly or through such Federal agency as the President may designate, any power or authority conferred to the President by this chapter.

TITLE IV - MAJOR DISASTER ASSISTANCE PROGRAMS**{401} §5170. Procedure for declaration**

All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As part of such request, and as a prerequisite to major disaster assistance under this chapter, the Governor shall take appropriate response action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-

sharing requirements of this chapter. Based on the request of a Governor under this section, the President may declare under this chapter that a major disaster or emergency exists.

{402} §5170a. General Federal Assistance

In any major disaster, the President may—

- (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts;
- (2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;
- (3) provide technical and advisory assistance to affected State and local governments for—
 - (A) the performance of essential community services;
 - (B) issuance of warnings of risks and hazards;
 - (C) public health and safety information, including dissemination of such information;
 - (D) provision of health and safety measures; and
 - (E) management, control, and reduction of immediate threats to public health and safety; and
- (4) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

{403} §5170b. Essential Assistance

(a) In general. Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows:

(1) Federal resources, generally. Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this Act.

(2) Medicine, food, and other consumables. Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine, food, and other consumable supplies, and other services and assistance to disaster victims.

(3) Work and services to save lives and protect property. Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including—

(A) debris removal;

(B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine, and other essential needs, including movement of supplies or persons;

(C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;

(D) provision of temporary facilities for schools and other essential community services;

(E) demolition of unsafe structures which endanger the public;

(F) warning of further risks and hazards;

(G) dissemination of public information and assistance regarding health and safety measures;

(H) provision of technical advice to State and local governments on disaster management and control; and

(I) reduction of immediate threats to life, property, and public health and safety.

(4) Contributions. Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.

(b) Federal share. The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance.

(c) Utilization of DOD resources

(1) General rule. During the immediate aftermath of an incident which may ultimately qualify for assistance under this title or title V of this Act [42 U.S.C. 5170 et seq. or 5191 et seq.], the Governor of the State in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property.

If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.

(2) Rules applicable to debris removal. Any removal of debris and wreckage carried out under this subsection shall be subject to section 5173(b) of this title [42 U.S.C. 5173(b)], relating to unconditional authorization and indemnification for debris removal.

(3) Expenditures out of disaster relief funds. The cost of any assistance provided pursuant to this subsection shall be reimbursed out of funds made available to carry out this Act.

(4) Federal share. The Federal share of assistance under this subsection shall be not less than 75 percent.

(5) Guidelines. Not later than 180 days after the date of the enactment of the Disaster Relief and Emergency Assistance Amendments of 1988 [enacted Nov. 23, 1988], the President shall issue guidelines for carrying out this subsection. Such guidelines shall consider any likely effect assistance under this subsection will have on the availability of other forms of assistance under this Act.

(6) Definitions. For purposes of this section—

(A) Department of Defense. The term ‘Department of Defense’ has the meaning the term “department” has under section 101 of title 10, United States Code.

(B) Emergency work. The term “emergency work” includes clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services.

{404} §5170c. Hazard Mitigation

(a) In General. The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster. Such measures shall be identified following the evaluation of natural hazards under section 5176 of this title and shall be subject to approval by the President. The total of contributions under this section for a major disaster shall not exceed 15 percent of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this chapter with respect to the major disaster.

(b) Property acquisition and relocation assistance.

(1) General authority. In providing hazard mitigation assistance under this section in connection with flooding, the Director of the Federal Emergency Management Agency may provide property acquisition and relocation assistance for projects that meet the requirements of paragraph (2).

(2) Terms and conditions. An acquisition or relocation project shall be eligible to receive assistance pursuant to paragraph (1) only if—

(A) the applicant for the assistance is otherwise eligible to receive assistance under the hazard mitigation grant program established under subsection (a) of this section; and

(B) on or after December 3, 1993, the applicant for the assistance enters into an agreement with the Director that provides assurances that—

(i) any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is

compatible with open space, recreational, or wetlands management practices;

(ii) no new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than—

(I) a public facility that is open on all sides and functionally related to a designated open space;

(II) a rest room; or

(III) a structure that the Director approves in writing before the commencement of the construction of the structure; and

(iii) after receipt of the assistance, with respect to any property acquired, accepted or from which a structure was removed under the acquisition or relocation program—

(I) no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity; and

(II) no assistance referred to in subclause (I) will be provided to the applicant by any Federal source.

(3) Statutory construction. Nothing in this subsection is intended to alter or otherwise affect an agreement for an acquisition or relocation project carried out pursuant to this section that was in effect on December 3, 1993.

{405} §5171. Federal facilities

(a) Repair, reconstruction, restoration or replacement of United States facilities. The President may authorize any Federal agency to repair, reconstruct, restore, or replace any facility owned by the United States and under the jurisdiction of such agency which is damaged or destroyed by any major disaster if he determines that such repair, reconstruction, restoration, or replacement is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation for such purposes, or the obtaining of congressional committee approval.

(b) Availability of funds appropriated to agency for repair, reconstruction, restoration, or replacement of agency facilities. In order to carry out the provisions of this section, such repair, reconstruction, restoration, or replacement may be begun notwithstanding a lack or an insufficiency of funds appropriated for such purpose, where such lack or insufficiency can be remedied by the transfer, in accordance with law, of funds appropriated to that agency for another purpose.

(c) Steps for mitigation of hazards. In implementing this section, Federal agencies shall evaluate the natural hazards to which these facilities are exposed and shall take appropriate action to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed by the President.

{406} §5172. Repair, restoration, and replacement of damaged facilities

(a) Contributions. The President may make contributions—

(1) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility which is damaged or destroyed by a major disaster and for associated expenses incurred by such government; and

(2) to a person who owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of such facility and for associated expenses incurred by such person.

(b) Minimum Federal share. The Federal share of assistance under this section shall be not less than—

(1) 75 percent of the net eligible cost of repair, restoration, reconstruction, or replacement carried out under this section;

(2) 100 percent of associated expenses described in subsections (f)(1) and (f)(2) of this section; and

(3) 75 percent of associated expenses described in subsections (f)(3), (f)(4), and (f)(5) of this section.

(c) Large in lieu contributions.

(1) For public facilities. In any case where a State or local government determines that the public welfare would not be best served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by such State or local government, it may elect to receive, in lieu of a contribution under subsection (a)(1) of this section, a contribution of not to exceed 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing such facility and of associated expenses. Funds contributed under this subsection may be used to repair, restore, or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures which the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster.

(2) For private nonprofit facilities. In any case where a person who owns or operates a private nonprofit facility determines

that the public welfare would not be best served by repairing, restoring, reconstructing, or replacing such facility, such person may elect to receive, in lieu of a contribution under subsection (a)(2) of this section, a contribution of not to exceed 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing such facility and of associated expenses. Funds contributed under this subsection may be used to repair, restore, or expand other selected private nonprofit facilities owned or operated by such person, to construct new private nonprofit facilities to be owned or operated by such person, or to fund hazard mitigation measures which such person determines to be necessary to meet a need for its services and functions in the area affected by the major disaster.

(3) Restriction on use for State or local contribution. Funds provided under this subsection shall not be used for any State or local government cost-sharing contribution required under this chapter.

(d) Flood insurance.

(1) Reduction of Federal assistance. If a public facility or private nonprofit facility located in a special flood hazard area identified for more than 1 year by the Director pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is damaged or destroyed, after the 180th day following November 23, 1988, by flooding in a major disaster and such facility is not covered on the date of such flooding by flood insurance, the Federal assistance which would otherwise be available under this section with respect to repair, restoration, reconstruction, and replacement of such facility and associated expenses shall be reduced in accordance with paragraph (2).

(2) Amount of reduction. The amount of a reduction in Federal assistance under this section with respect to a facility shall be the lesser of—

(A) the value of such facility on the date of the flood damage or destruction, or

(B) the maximum amount of insurance proceeds which would have been payable with respect to such facility if such facility had been covered by flood insurance under the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.] on such date.

(3) Exception. Paragraphs (1) and (2) shall not apply to a private nonprofit facility which is not covered by flood insurance solely because of the local government's failure to participate in the flood insurance program established by the National Flood Insurance Act.

(4) Dissemination of information. The President shall disseminate information regarding the reduction in Federal assistance provided for by this subsection to State and local governments and the owners and operators of private nonprofit facilities who may be affected by such a reduction.

(e) Net eligible cost

(1) General rule. For purposes of this section, the cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility on the basis of the design of such facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or by the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) shall, at a minimum, be treated as the net eligible cost of such repair, restoration, reconstruction, or replacement.

(2) Special rule. In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major

disaster, the cost of repairing, restoring, reconstructing, or replacing such facility shall include, for purposes of this section, only those costs which, under the contract for such construction, are the owner's responsibility and not the contractor's responsibility.

(f) Associated expenses. For purposes of this section, associated expenses include the following:

(1) Necessary costs. Necessary costs of requesting, obtaining, and administering Federal assistance based on a percentage of assistance provided as follows:

(A) For an applicant whose net eligible costs equal less than \$100,000, 3 percent of such net eligible costs.

(B) For an applicant whose net eligible costs equal \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of such net eligible costs in excess of \$100,000.

(C) For an applicant whose net eligible costs equal \$1,000,000 or more but less than \$5,000,000, \$21,000 plus 1 percent of such net eligible costs in excess of \$1,000,000.

(D) For an applicant whose net eligible costs equal \$5,000,000 or more, \$61,000 plus 1/2 percent of such net eligible costs in excess of \$5,000,000.

(2) Extraordinary costs. Extraordinary costs incurred by a State for preparation of damage survey reports, final inspection reports, project applications, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expenses of such employees, but not including pay for regular time of such employees, based on the total amount of assistance provided under sections 5170b, 5170c, 5172, 5173, 5192 and 5193 of this title in such State in connection with the major disaster as follows:

(A) If such total amount is less than \$100,000, 3 percent of such total amount.

(B) If such total amount is \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of such total amount in excess of \$100,000.

(C) If such total amount is \$1,000,000 or more but less than \$5,000,000, \$21,000 plus 1 percent of such total amount in excess of \$1,000,000.

(D) If such total amount is \$5,000,000 or more, \$61,000 plus 1/2 percent of such total amount in excess of \$5,000,000.

(3) Costs of National Guard. The costs of mobilizing and employing the National Guard for performance of eligible work.

(4) Costs of prison labor. The costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging.

(5) Other labor costs. Base and overtime wages for an applicant's employees and extra hires performing eligible work plus fringe benefits on such wages to the extent that such benefits were being paid before the disaster.

{407} §5173. Debris removal

(a) Presidential authority. The President may make contributions-

(1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and

(2) to make grants to any State or local government or owner or operator of a private nonprofit facility for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.

(b) Authorization by State or local government; indemnification agreement. No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.

(c) Rules relating to large lots. The President shall issue rules which provide for recognition of differences existing among urban, suburban, and rural lands in implementation of this section so as to facilitate adequate removal of debris and wreckage from large lots.

(d) Federal share. The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of debris and wreckage removal carried out under this section.

{408} §5174. Temporary housing assistance

(a) Provision of temporary housing

(1) In general. The President may—

(A) provide, by purchase or lease, temporary housing (including unoccupied habitable dwellings), suitable rental housing, mobile homes, or other readily fabricated dwellings to persons who, as a result of a major disaster, require temporary housing; and

(B) reimburse State and local governments in accordance with paragraph (4) for the cost of sites provided under paragraph (2).

(2) Mobile home site.

(A) In general. Any mobile home or other readily fabricated dwelling provided under this section shall whenever possible be located on a site which—

(i) is provided by the State or local government; and

(ii) has utilities provided by the State or local government, by the owner of the site, or by the occupant who was displaced by the major disaster.

(B) Other sites. Mobile homes and other readily fabricated dwellings may be located on sites provided by the President if the President determines that such sites would be more economical or accessible than sites described in subparagraph (A).

(3) Period. Federal financial and operational assistance under this section shall continue for not longer than 18 months after the date of the major disaster declaration by the President, unless the President determines that due to extraordinary circumstances it would be in the public interest to extend such 18-month period.

(4) Federal share. The Federal share of assistance under this section shall be 100 percent; except that the Federal share of assistance under this section for construction and site development costs (including installation of utilities) at a mobile home group site shall be 75 percent of the eligible cost of such assistance. The State or local government receiving assistance under this section shall pay any cost which is not paid for from the Federal share.

(b) Temporary mortgage and rental payments. The President is authorized to provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of individuals and families who, as a result of financial hardship caused by a major disaster, have received written notice of dispossession or eviction from a residence by reason of a foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease, entered into prior to such disaster. Such assistance shall be provided for the duration of the period of financial hardship but not to exceed 18 months.

(c) In lieu expenditures. In lieu of providing other types of temporary housing after a major disaster, the President is authorized to make expenditures for the purpose of repairing or restoring to a habitable condition owner-occupied private residential structures made uninhabitable by a major disaster which are capable of being restored quickly to a habitable condition.

(d) Transfer of temporary housing

(1) Direct sale to occupants. Notwithstanding any other provision of law, any temporary housing acquired by purchase may be sold directly to individuals and families who are occupants of temporary housing at prices that are fair and equitable, as determined by the President.

(2) Transfers to states, local governments, and voluntary organizations. The President may sell or otherwise make available temporary housing units directly to States, other governmental entities, and voluntary organizations. The President shall impose as a condition of transfer under this paragraph a covenant to comply with the provisions of section 308 [42 U.S.C. 5171] requiring nondiscrimination in occupancy of such temporary housing units. Such disposition shall be limited to units purchased under the provisions of subsection (a) of this section and to the purposes of providing temporary housing for disaster victims in major disasters or emergencies.

(e) Notification.

(1) In general. Each person who applies for assistance under this section shall be notified regarding the type and amount of any assistance for which such person qualifies. Whenever practicable, such notice shall be provided within 7 days after the date of submission of such application.

(2) Information. Notification under this subsection shall provide information regarding—

(A) all forms of such assistance available;

(B) any specific criteria which must be met to qualify for each type of assistance that is available;

(C) any limitations which apply to each type of assistance;
and

(D) the address and telephone number of offices
responsible for responding to—

(i) appeals of determinations of eligibility for assistance;
and

(ii) requests for changes in the type or amount of
assistance provided.

(f) Location. In providing assistance under this section, consideration shall be given to the location of and travel time to—

(1) the applicant's home and place of business;

(2) schools which the applicant or members of the applicant's family who reside with the applicant attend; and

(3) crops or livestock which the applicant tends in the course of any involvement in farming which provides 25 percent or more of the applicant's annual income.

§5175. Repealed.

Pub.L. 100-707, Title I, 105(m)(2), Nov. 23, 1988, 102 Stat. 4696

{409} §5176. Minimum standards for public and private structures

As a condition of any disaster loan or grant made under the provisions of this chapter, the recipient shall agree that any repair or construction to be financed therewith shall be in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards, and shall furnish such evidence of compliance with this section as may be required by regulation. As a further condition of any loan or grant made under the provisions of this chapter, the State or local government shall agree that the natural hazards in the areas in which the proceeds of the grants or loans are to be used shall be evaluated and appropriate action shall be taken to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed or approved by the President after adequate consultation with the appropriate elected officials of general purpose local governments, and the State shall

furnish such evidence of compliance with this section as may be required by regulation.

{410} §5177. Unemployment assistance

(a) Benefit assistance. The President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of Title 26) or waiting period credit. Such assistance as the President shall provide shall be available to an individual as long as the individual's unemployment caused by the major disaster continues or until the individual is reemployed in a suitable position, but no longer than 26 weeks after the major disaster is declared. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred. The President is directed to provide such assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.

(b) Reemployment assistance.

(1) State assistance. A State shall provide, without reimbursement from any funds provided under this chapter, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section.

(2) Federal assistance. The President may provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services.

{411} §5178. Individual and family grant programs

(a) In general. The President is authorized to make a grant to a State for the purpose of making grants to individuals or families adversely affected by a major disaster for meeting disaster-related necessary expenses or serious needs of such individuals or families in those cases where such individuals or families are unable to meet such expenses or needs through assistance under other provisions of this chapter or through other means.

(b) Cost sharing.

(1) Federal share. The Federal share of a grant to an individual or a family under this section shall be equal to 75 percent of the actual cost incurred.

(2) State contribution. The Federal share of a grant under this section shall be paid only on condition that the remaining 25 percent of the cost is paid to an individual or family from funds made available by a State.

(c) Regulations. The President shall promulgate regulations to carry out this section and such regulations shall include national criteria, standards, and procedures for the determination of eligibility for grants and the administration of grants under this section.

(d) Administrative expenses. A State may expend not to exceed 5 percent of any grant made by the President to it under subsection (a) of this section for expenses of administering grants to individuals and families under this section.

(e) Administration through Governor. The Governor of a State shall administer the grant program authorized by this section in the State.

(f) Limit on grants to individual. No individual or family shall receive grants under this section aggregating more than \$10,000 with

respect to any single major disaster. Such \$10,000 limit shall annually be adjusted to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

{412} §5179. Food coupons and distribution

(a) Persons eligible; terms and conditions. Whenever the President determines that, as a result of a major disaster, low-income households are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to distribute through the Secretary of Agriculture or other appropriate agencies coupon allotments to such households pursuant to the provisions of the Food Stamp Act of 1964 (Pub.L 91-671; 84 Stat. 2048) [7 U.S.C. 2011 et seq.] and to make surplus commodities available pursuant to the provisions of this chapter.

(b) Duration of assistance; factors considered. The President, through the Secretary of Agriculture or other appropriate agencies, is authorized to continue to make such coupon allotments and surplus commodities available to such households for so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households, to which assistance is made available under this section.

(c) Food Stamp Act provisions unaffected. Nothing in this section shall be construed as amending or otherwise changing the provisions of the Food Stamp Act of 1964 [7 U.S.C.A. 2011 et seq.] except as they relate to the availability of food stamps in an area affected by a major disaster.

{413} §5180. Food commodities

(a) Emergency mass feeding. The President is authorized and directed to assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.

(b) Funds for purchase of food commodities. The Secretary of Agriculture shall utilize funds appropriated under section 612c of Title 7, to purchase food commodities necessary to provide adequate supplies for use in any area of the United States in the event of a major disaster or emergency in such area.

{414} §5181. Relocation assistance

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub.L 91-646) [42 U.S.C. 4601 et seq.] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

{415} §5182. Legal services

Whenever the President determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by this chapter, the President shall assure that such programs are conducted with the advice and assistance of appropriate Federal agencies and State and local bar associations.

{416} §5183. Crisis counseling assistance and training

The President is authorized to provide professional counseling services, including financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers, to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath.

{417} §5184. Community disaster loans

(a) The President is authorized to make loans to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions. The amount of any such loan shall be based on need, and shall not exceed 25 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs. Repayment of all or any part of such loan to the extent that revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character shall be cancelled.

(b) Any loans made under this section shall not reduce or otherwise affect any grants or other assistance under this chapter.

{418} §5185. Emergency communications

The President is authorized during, or in anticipation of, an emergency or major disaster to establish temporary communications systems and to make such communications available to State and local government officials and other persons as he deems appropriate.

{419} §5186. Emergency public transportation

The President is authorized to provide temporary public transportation service in an area affected by a major disaster to meet emergency needs and to provide transportation to governmental offices, supply centers, stores, post offices, schools, major employment centers, and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible.

{420} §5187. Fire suppression grants

The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland which threatens such destruction as would constitute a major disaster.

{421} §5188. Timber sale contracts

(a) Cost-sharing arrangement. Where an existing timber sale contract between the Secretary of Agriculture or the Secretary of the Interior and a timber purchaser does not provide relief from major physical change not due to negligence of the purchaser prior to approval of construction of any section of specified road or of any other specified development facility and, as a result of a major disaster, a major physical change results in additional construction work in connection with such road or facility by such purchaser with an estimated cost, as determined by the appropriate Secretary, (1) of more than \$1,000 for sales under one million board feet, (2) of more than \$1 per thousand board feet for sales of one to three million board feet, or (3) of more than \$3,000 for sales over three million board feet, such increased construction cost shall be borne by the United States.

(b) Cancellation of authority. If the appropriate Secretary determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement authorized by subsection (a) of this section, he may allow cancellation of a contract entered into by his Department notwithstanding contrary provisions therein.

(c) Public notice of sale. The Secretary of Agriculture is authorized to reduce to seven days the minimum period of advance public notice required by section 476 of Title 16, in connection with the sale of timber from national forests, whenever the Secretary determines that (1) the sale of such timber will assist in the construction of any area of a State damaged by a major disaster, (2) the sale of such timber will assist in sustaining the economy of such area, or (3) the sale of such timber is necessary to salvage the value of timber damaged in such major disaster or to protect undamaged timber.

(d) State grants for removal of damaged timber; reimbursement of expenses limited to salvage value of removed timber. The President, when he determines it to be in the public interest, is authorized to make grants to any State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster, and such State or local government is authorized upon application, to make payments out of such grants to any person for reimbursement of expenses actually incurred by such person in the removal of damaged timber, not to exceed the amount that such expenses exceed the salvage value of such timber.

{422} §5189. Simplified procedure

If the Federal estimate of the cost of—

(1) repairing, restoring, reconstructing, or replacing under section 5172 of this title any damaged or destroyed public facility or private nonprofit facility,

(2) emergency assistance under section 5170b or 5192 of this title, or

(3) debris removed under section 5173 of this title,

is less than \$35,000, the President (on application of the State or local government or the owner or operator of the private nonprofit facility) may make the contribution to such State or local government or owner or operator under section 5170b, 5172, 5173, or 5192 of this title, as the case may be, on the basis of such Federal estimate. Such \$35,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

{423} §5189a. Appeals of assistance decisions

(a) Right of appeal. Any decision regarding eligibility for, from, or amount of assistance under this subchapter may be appealed within 60 days after the date on which the applicant for such assistance is notified of the award or denial of award of such assistance.

(b) Period for decision. A decision regarding an appeal under subsection (a) of this section shall be rendered within 90 days after the date on which the Federal official designated to administer such appeals receives notice of such appeal.

(c) Rules. The President shall issue rules which provide for the fair and impartial consideration of appeals under this section.

{424} §5189b. Date of eligibility; expenses incurred before date of disaster

Eligibility for Federal assistance under this subchapter shall begin on the date of the occurrence of the event which results in a

declaration by the President that a major disaster exists; except that reasonable expenses which are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter.

TITLE V - EMERGENCY ASSISTANCE PROGRAMS

{501} §5191. Procedure for declaration

(a) Request and declaration. All requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of such request, and as a prerequisite to emergency assistance under this chapter, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information describing the State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may declare that an emergency exists.

(b) Certain emergencies involving Federal primary responsibility. The President may exercise any authority vested in him by section 5192 of this title or section 5193 of this title with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. In determining whether or not such an emergency

exists, the President shall consult the Governor of any affected State, if practicable. The President's determination may be made without regard to subsection (a) of this section.

{502} §5192. Federal emergency assistance

(a) Specified. In any emergency, the President may—

- (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe;
- (2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;
- (3) provide technical and advisory assistance to affected State and local governments for—
 - (A) the performance of essential community services;
 - (B) issuance of warnings of risks or hazards;
 - (C) public health and safety information, including dissemination of such information;
 - (D) provision of health and safety measures; and
 - (E) management, control, and reduction of immediate threats to public health and safety;
- (4) provide emergency assistance through Federal agencies;

(5) remove debris in accordance with the terms and conditions of section 5173 of this title;

(6) provide temporary housing assistance in accordance with section 5174 of this title; and

(7) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

(b) General. Whenever the Federal assistance provided under subsection (a) of this section with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe.

{503} §5193. Amount of assistance

(a) Federal share. The Federal share for assistance provided under this subchapter shall be equal to not less than 75 percent of the eligible costs.

(b) Limit on amount of assistance.

(1) In general. Except as provided in paragraph (2), total assistance provided under this subchapter for a single emergency shall not exceed \$5,000,000.

(2) Additional assistance. The limitation described in paragraph (1) may be exceeded when the President determines that—

(A) continued emergency assistance is immediately required;

(B) there is a continuing and immediate risk to lives, property, public health or safety; and

(C) necessary assistance will not otherwise be provided on a timely basis.

(3) Report. Whenever the limitation described in paragraph (1) is exceeded, the President shall report to the Congress on the nature and extent of emergency assistance requirements and shall propose additional legislation if necessary.

TITLE VI - EMERGENCY PREPAREDNESS

{601} §5195. Declaration of policy

The purpose of this subchapter is to provide a system of emergency preparedness for the protection of life and property in the United States from hazards and to vest responsibility for emergency preparedness jointly in the Federal Government and the States and their political subdivisions. The Congress recognizes that the organizational structure established jointly by the Federal Government and the States and their political subdivisions for emergency preparedness purposes can be effectively utilized to provide relief and assistance to people in areas of the United States struck by a hazard. The Federal Government shall provide necessary direction, coordination, and guidance, and shall provide necessary assistance, as authorized in this subchapter so that a comprehensive emergency preparedness system exists for all hazards.

{602} §5195a. Definitions

(a) Definitions. For purposes of this subchapter only:

(1) Hazard. The term “hazard” means an emergency or disaster resulting from—

(A) a natural disaster; or

(B) an accidental or man-caused event.

(2) Natural disaster. The term “natural disaster” means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons.

(3) Emergency preparedness. The term “emergency preparedness” means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Such term includes the following:

(A) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the non-military evacuation of the civilian population).

(B) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(C) Measures to be undertaken following a hazard (including activities for fire fighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

(4) Organizational equipment. The term “organizational equipment” means equipment determined by the Director to be necessary to an emergency preparedness organization, as distinguished from personal equipment, and of such a type or nature as to require it to be financed in whole or in part by the Federal Government. Such term does not include those items which the local community normally uses in combating local disasters, except when required in unusual quantities dictated by the requirements of the emergency preparedness plans.

(5) Materials. The term “materials” includes raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for emergency preparedness.

(6) Facilities. The term “facilities”, except as otherwise provided in this subchapter, includes buildings, shelters, utilities, and land.

(7) Director. The term “Director” means the Director of the Federal Emergency Management Agency.

(8) Neighboring countries. The term “neighboring countries” includes Canada and Mexico.

(9) United States and States. The terms “United States” and “States” includes the several States, the District of Columbia, and territories and possessions of the United States.

(10) State. The term “State” includes interstate emergency preparedness authorities established under section 5196(h) of this title.

(b) Cross reference. The terms “national defense” and “defense,” as used in the Defense Production Act of 1950 (50 U.S.C.App. 2061 et seq.), includes emergency preparedness activities conducted pursuant to this subchapter.

{603} §5195b. Administration of subchapter

This subchapter shall be carried out by the Director of the Federal Emergency Management Agency.

SUBTITLE A - POWERS AND DUTIES

{611} §5196. Detailed functions of administration

(a) In general. In order to carry out the policy described in section 5195 of this title, the Director shall have the authorities provided in this section.

(b) Federal emergency response plans and programs. The Director may prepare Federal response plans and programs for the emergency preparedness of the United States and sponsor and direct such plans and programs. To prepare such plans and programs and coordinate such plans and programs with State efforts, the Director may request such reports on State plans and operations for emergency preparedness as may be necessary to keep the President, Congress, and the States advised of the status of emergency preparedness in the United States.

(c) Delegation of emergency preparedness responsibilities. With the approval of the President, the Director may delegate to other departments and agencies of the Federal Government appropriate emergency preparedness responsibilities and review and coordinate the emergency preparedness activities of the

departments and agencies with each other and with the activities of the States and neighboring countries.

(d) Communications and warnings. The Director may make appropriate provision for necessary emergency preparedness communications and for dissemination of warnings to the civilian population of a hazard.

(e) Emergency preparedness measures. The Director may study and develop emergency preparedness measures designed to afford adequate protection of life and property, including—

(1) research and studies as to the best methods of treating the effects of hazards;

(2) developing shelter designs and materials for protective covering or construction; and

(3) developing equipment or facilities and effecting the standardization thereof to meet emergency preparedness requirements.

(f) Training programs.

(1) The Director may—

(A) conduct or arrange, by contract or otherwise, for training programs for the instruction of emergency preparedness officials and other persons in the organization, operation, and techniques of emergency preparedness;

(B) conduct or operate schools or including the payment of travel expenses, in accordance with subchapter I of chapter 57 of Title 5, and the Standardized Government Travel Regulations, and per diem allowances, in lieu of subsistence for trainees in attendance or the furnishing of

subsistence and quarters for trainees and instructors on terms prescribed by the Director; and

(C) provide instructors and training aids as necessary.

(2) The terms prescribed by the Director for the payment of travel expenses and per diem allowances authorized by this subsection shall include a provision that such payment shall not exceed one-half of the total cost of such expenses.

(3) The Director may lease real property required for the purpose of carrying out this subsection, but may not acquire fee title to property unless specifically authorized by law.

(g) Public dissemination of emergency preparedness information. The Director may publicly disseminate appropriate emergency preparedness information by all appropriate means.

(h) Interstate emergency preparedness compacts.

(1) The Director may—

(A) assist and encourage the States to negotiate and enter into interstate emergency preparedness compacts;

(B) review the terms and conditions of such proposed compacts in order to assist, to the extent feasible, in obtaining uniformity between such compacts and consistency with Federal emergency response plans and programs;

(C) assist and coordinate the activities under such compacts; and

(D) aid and assist in encouraging reciprocal emergency preparedness legislation by the States which will permit the

furnishing of mutual aid for emergency preparedness purposes in the event of a hazard which cannot be adequately met or controlled by a State or political subdivision thereof threatened with or experiencing a hazard.

(2) A copy of each interstate emergency preparedness compact shall be transmitted promptly to the Senate and the House of Representatives. The consent of Congress is deemed to be granted to each such compact upon the expiration of the 60-day period beginning on the date on which the compact is transmitted to Congress

(3) Nothing in this subsection shall be construed as preventing Congress from disapproving, or withdrawing at any time its consent to, any interstate emergency preparedness compact.

(i) Materials and facilities.

(1) The Director may procure by condemnation or otherwise, construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency preparedness, with the right to take immediate possession thereof.

(2) Facilities acquired by purchase, donation, or other means of transfer may be occupied, used, and improved for the purposes of this subchapter before the approval of title by the Attorney General as required by section 255 of Title 40.

(3) The Director shall submit to Congress a report, at least quarterly, describing all property acquisitions made pursuant to this subsection.

(4) The Director may lease real property required for the purpose of carrying out the provisions of this subsection, but shall not acquire fee title to property unless specifically authorized by law.

(5) The Director may procure and maintain under this subsection radiological, chemical, bacteriological, and biological agent monitoring and decontamination devices and distribute such devices by loan or grant to the States for emergency preparedness purposes, under such terms and conditions as the Director shall prescribe.

(j) Financial contributions.

(1) The Director may make financial contributions, on the basis of programs or projects approved by the Director, to the States for emergency preparedness purposes, including the procurement, construction, leasing, or renovating of materials and facilities. Such contributions shall be made on such terms or conditions as the Director shall prescribe, including the method of purchase, the quantity, quality, or specifications of the materials or facilities, and such other factors or care or treatment to assure the uniformity, availability, and good condition of such materials or facilities.

(2) No contribution may be made under this subsection for the procurement of land or for the purchase of personal equipment for State or local emergency preparedness workers.

(3) The amounts authorized to be contributed by the Director to each State for organizational equipment shall be equally matched by such State from any source it determines is consistent with its laws.

(4) Financial contributions to the States for shelters and other protective facilities shall be determined by taking the amount of funds appropriated or available to the Director for such facilities in each fiscal year and apportioning such funds among the States in the ratio which the urban population of the critical target areas (as determined by the Director) in each State, at the time of the determination, bears to the total urban population of the critical target areas of all of the States.

(5) The amounts authorized to be contributed by the Director to each State for such shelters and protective facilities shall be equally matched by such State from any source it determines is consistent with its laws and, if not matched within a reasonable time, the Director may reallocate such amounts to other States under the formula described in paragraph (4). The value of any land contributed by any State or political subdivision thereof shall be excluded from the computation of the State share under this subsection.

(6) The amounts paid to any State under this subsection shall be expended solely in carrying out the purposes set forth herein and in accordance with State emergency preparedness programs or projects approved by the Director. The Director shall make no contribution toward the cost of any program or project for the procurement, construction, or leasing of any facility which (A) is intended for use, in whole or in part, for any purpose other than emergency preparedness, and (B) is of such kind that upon completion it will, in the judgment of the Director, be capable of producing sufficient revenue to provide reasonable assurance of the retirement or repayment of such cost; except that (subject to the preceding provisions of this subsection) the Director may make a contribution to any State toward that portion of the cost of the construction, reconstruction, or enlargement of any facility which the Director determines to be directly attributable to the incorporation in such facility of any feature of construction or design not necessary for the principal intended purpose thereof but which is, in the judgment of the Director necessary for the use of such facility for emergency preparedness purposes.

(7) The Director shall submit to Congress a report, at least annually, regarding all contributions made pursuant to this subsection.

(8) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work

financed with the assistance of any contribution of Federal funds made by the Director under this subsection shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (commonly known as the Davis-Bacon Act (40 U.S.C. 276a to 276a-5)), and every such employee shall receive compensation at a rate not less than one and 1/2 times the basic rate of pay of the employee for all hours worked in any workweek in excess of eight hours in any workday or 40 hours in the workweek, as the case may be. The Director shall make no contribution of Federal funds without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C.App.) and section 276c of Title 40.

(k) Sale or disposal of certain materials and facilities. The Director may arrange for the sale or disposal of materials and facilities found by the Director to be unnecessary or unsuitable for emergency preparedness purposes in the same manner as provided for excess property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.). Any funds received as proceeds from the sale or other disposition of such materials and facilities shall be deposited into the Treasury as miscellaneous receipts.

{612} §5196a. Mutual aid pacts between States and neighboring countries

The Director shall give all practicable assistance to States in arranging, through the Department of State, mutual emergency preparedness aid between the States and neighboring countries.

{613} §5196b. Contributions for personnel and administrative expenses

(a) General authority. To further assist in carrying out the purposes of this subchapter, the Director may make financial contributions to the States (including interstate emergency preparedness authorities established pursuant to section 5196(h) of this title) for necessary and essential State and local emergency preparedness personnel and administrative expenses, on the basis of approved plans (which shall be consistent with the Federal emergency response plans for emergency preparedness) for the emergency preparedness of the States. The financial contributions to the States under this section may not exceed one-half of the total cost of such necessary and essential State and local emergency preparedness personnel and administrative expenses.

(b) Plan requirements. A plan submitted under this section shall—

- (1) provide, pursuant to State law, that the plan shall be in effect in all political subdivisions of the State and be mandatory on them and be administered or supervised by a single State agency;
- (2) provide that the State shall share the financial assistance with that provided by the Federal Government under this section from any source determined by it to be consistent with State law;
- (3) provide for the development of State and local emergency preparedness operational plans, pursuant to standards approved by the Director;
- (4) provide for the employment of a full-time emergency preparedness director, or deputy director, by the State;
- (5) provide that the State shall make such reports in such form and content as the Director may require; and

(6) make available to duly authorized representatives of the Director and the Comptroller General, books, records, and papers necessary to conduct audits for the purposes of this section.

(c) Terms and conditions. The Director shall establish such other terms and conditions as the Director considers necessary and proper to carry out this section.

(d) Application of other provisions. In carrying out this section, the provisions of sections 5196(h) and 5197(h) of this title shall apply.

(e) Allocation of funds. For each fiscal year concerned, the Director shall allocate to each State, in accordance with regulations and the total sum appropriated under this subchapter, amounts to be made available to the States for the purposes of this section. Regulations governing allocations to the States under this subsection shall give due regard to (1) the criticality of the areas which may be affected by hazards with respect to the development of the total emergency preparedness readiness of the United States, (2) the relative state of development of emergency preparedness readiness of the State, (3) population, and (4) such other factors as the Director shall prescribe. The Director may reallocate the excess of any allocation not used by a State in a plan submitted under this section. Amounts paid to any State or political subdivision under this section shall be expended solely for the purposes set forth in this section.

(f) Submission of plan. If a State fails to submit a plan for approval as required by this section within 60 days after the Director notifies the States of the allocations under this section, the Director may reallocate such funds, or portions thereof, among the other States in such amounts as, in the judgment of the Director, will best assure the adequate development of the emergency preparedness capability of the United States.

(g) Annual reports. The Director shall report annually to the Congress all contributions made pursuant to this section.

{614} §5196c. Requirement for State matching funds for construction of emergency operating centers

Notwithstanding any other provision of this subchapter, funds appropriated to carry out this subchapter may not be used for the purpose of constructing emergency operating centers (or similar facilities) in any State unless such State matches in an equal amount the amount made available to such State under this subchapter for such purpose.

{615} §5196d. Use of funds to prepare for and respond to hazards

Funds made available to the States under this subchapter may be used by the States for the purposes of preparing for hazards and providing emergency Assistance in response to hazards. Regulations prescribed to carry out this Section shall authorize the use of emergency preparedness personnel, materials, and facilities supported in whole or in part through contributions under this Subchapter for emergency preparedness activities and measures related to Hazards.

SUBTITLE B - GENERAL PROVISIONS**{621} §5197. Administrative authority**

(a) In general. For the purpose of carrying out the powers and duties assigned to the Director under this subchapter, the Director may exercise the administrative authorities provided under this section.

(b) Advisory personnel.

(1) The Director may employ not more than 100 part-time or temporary advisory personnel (including not to exceed 25 subjects of the United Kingdom or citizens of Canada) as the Director considers to be necessary in carrying out the provisions of this subchapter.

(2) Persons holding other offices or positions under the United States for which they receive compensation, while serving as advisory personnel, shall receive no additional compensation for such service. Other part-time or temporary advisory personnel so employed may serve without compensation or may receive compensation at a rate not to exceed \$180 for each day of service, plus authorized subsistence and travel, as determined by the Director.

(c) Services of other agency personnel and volunteers. The Director may—

(1) use the services of Federal agencies and, with the consent of any State or local government, accept and use the services of State and local agencies;

(2) establish and use such regional and other offices as may be necessary; and

(3) use such voluntary and uncompensated services by individuals or organizations as may from time to time be needed.

(d) Gifts. Notwithstanding any other provision of law, the Director may accept gifts of supplies, equipment, and facilities and may use or distribute such gifts for emergency preparedness purposes in accordance with the provisions of this subchapter.

(e) Reimbursement. The Director may reimburse any Federal agency for any of its expenditures or for compensation of its personnel and use or consumption of its materials and facilities under this subchapter to the extent funds are available.

(f) Printing. The Director may purchase such printing, binding, and blank-book work from public, commercial, or private printing establishments or binderies as the Director considers necessary upon orders placed by the Public Printer or upon waivers issued in accordance with section 504 of Title 44.

(g) Rules and regulations. The Director may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this subchapter and perform any of the powers and duties provided by this subchapter. The Director may perform any of the powers and duties provided by this subchapter through or with the aid of such officials of the Federal Emergency Management Agency as the Director may designate.

(h) Failure to expend contributions correctly.

(1) When, after reasonable notice and opportunity for hearing to the State or other person involved, the Director finds that there is a failure to expend funds in accordance with the regulations, terms, and conditions established under this subchapter for approved emergency preparedness plans, programs, or projects, the Director may notify such State or person that further payments will not be made to the State or person from appropriations under this subchapter (or from funds otherwise available for the purposes of this subchapter for any approved plan, program, or project with respect to which there is such failure to comply) until the Director is satisfied that there will no longer be any such failure.

(2) Until so satisfied, the Director shall either withhold the payment of any financial contribution to such State or person or limit payments to those programs or projects with respect to which there is substantial compliance with the regulations, terms, and conditions governing plans, programs, or projects hereunder.

(3) As used in this subsection, the term "person" means the political subdivision of any State or combination or group thereof or any person, corporation, association, or other entity of any nature whatsoever, including instrumentalities of States and political subdivisions.

{622} §5197a. Security regulations

(a) Establishment. The Director shall establish such security requirements and safeguards, including restrictions with respect to access to information and property as the Director considers necessary.

(b) Limitations on employee access to information. No employee of the Federal Emergency Management Agency shall be permitted to have access to information or property with respect to which access restrictions have been established under this section, until it shall have been determined that no information is contained in the files of the Federal Bureau of Investigation or any other investigative agency of the Government indicating that such employee is of questionable loyalty or reliability for security purposes, or if any such information is so disclosed, until the Federal Bureau of Investigation shall have conducted a full field investigation concerning such person and a report thereon shall have been evaluated in writing by the Director.

(c) National security positions. No employee of the Federal Emergency Management Agency shall occupy any position determined by the Director to be of critical importance from the standpoint of national security until a full field investigation concerning such employee shall have been conducted by the Director of the Office of Personnel Management and a report thereon shall have been evaluated in writing by the Director of the Federal Emergency Management Agency. In the event such full field investigation by the Director of the Office of Personnel Management develops any data reflecting that such applicant for a position of critical importance is of questionable loyalty or reliability for security purposes, or if the Director of the Federal Emergency Management Agency for any other reason considers it to be advisable, such investigation shall be discontinued and a report thereon shall be referred to the Director of the Federal Emergency Management Agency for evaluation in writing. Thereafter, the Director of the Federal Emergency Management Agency may refer

the matter to the Federal Bureau of Investigation for the conduct of a full field investigation by such Bureau. The result of such latter investigation by such Bureau shall be furnished to the Director of the Federal Emergency Management Agency for action.

(d) Employee oaths. Each Federal employee of the Federal Emergency Management Agency acting under the authority of this subchapter, except the subjects of the United Kingdom and citizens of Canada specified in section 5197(b) of this title, shall execute the loyalty oath or appointment affidavits prescribed by the Director of the Office of Personnel Management. Each person other than a Federal employee who is appointed to serve in a State or local organization for emergency preparedness shall before entering upon duties, take an oath in writing before a person authorized to administer oaths, which oath shall be substantially as follows:

“I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

“And I do further swear (or affirm) that I do not advocate, nor am I a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence; and that during such time as I am a member of _____ (name of emergency preparedness organization), I will not advocate nor become a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence.”

After appointment and qualification for office, the director of emergency preparedness of any State, and any subordinate emergency preparedness officer within such State designated by the director in writing, shall be qualified to administer any such oath within such State under such regulations as the director shall prescribe. Any person who shall be found guilty of having falsely taken such oath shall be punished as provided in section 1621 of Title 18.

{623} §5197b. Use of existing facilities

In performing duties under this subchapter, the Director—

- (1) shall cooperate with the various departments and agencies of the Federal Government;
- (2) shall use, to the maximum extent, the existing facilities and resources of the Federal Government and, with their consent, the facilities and resources of the States and political subdivisions thereof, and of other organizations and agencies; and
- (3) shall refrain from engaging in any form of activity which would duplicate or parallel activity of any other Federal department or agency unless the Director, with the written approval of the President, shall determine that such duplication is necessary to accomplish the purposes of this subchapter.

{624} §5197c. Annual report to Congress

The Director shall annually submit a written report to the President and Congress covering expenditures, contributions, work, and accomplishments of the Federal Emergency Management Agency pursuant to this subchapter, accompanied by such recommendations as the Director considers appropriate.

{625} §5197d. Applicability of subchapter

The provisions of this subchapter shall be applicable to the United States, its States, Territories and possessions, and the District of Columbia, and their political subdivisions.

{626} §5197e. Authorization of appropriations and transfers of funds

(a) Authorization of appropriations. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subchapter.

(b) Transfer authority. Funds made available for the purposes of this subchapter may be allocated or transferred for any of the purposes of this subchapter, with the approval of the Director of the Office of Management and Budget, to any agency or government corporation designated to assist in carrying out this subchapter. Each such allocation or transfer shall be reported in full detail to the Congress within 30 days after such allocation or transfer.

{627} §5197f. Relation to Atomic Energy Act of 1954

Nothing in this subchapter shall be construed to alter or modify the provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

{628} §5197g. Federal Bureau of Investigation

Nothing in this subchapter shall be construed to authorize investigations of espionage, sabotage, or subversive acts by any persons other than personnel of the Federal Bureau of Investigation.

**TITLE VII - AUTHORITY TO PRESCRIBE RULES AND
ACCEPT GIFTS****{701} §5201. Rules and regulations; acceptance of gifts**

(a)

(1) The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this chapter, and he may exercise any power or authority conferred on him by any section of this chapter either directly or through such Federal agency or agencies as he may designate.

(2) Deadline for payment of assistance. Rules and regulations authorized by paragraph (1) shall provide that payment of any assistance under this chapter to a State shall be completed within 60 days after the date of approval of such assistance.

(b) In furtherance of the purposes of this chapter, the President or his delegate may accept and use bequests, gifts, or donations of service, money, or property, real, personal, or mixed, tangible, or intangible. All sums received under this subsection shall be deposited in a separate fund on the books of the Treasury and shall be available for expenditure upon the certification of the President or his delegate. At the request of the President or his delegate, the Secretary of the Treasury may invest and reinvest excess monies in the fund. Such investments shall be in public debt securities with maturities suitable for the needs of the fund and shall bear interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The interest on such investments shall be credited to, and form a part of, the fund.

§5202. Repealed.

Pub.L. 100-707, Title I, 108(c), Nov. 23, 1988, 102 Stat. 4708

**MISCELLANEOUS STATUTORY PROVISIONS THAT
RELATE TO THE STAFFORD ACT****§5203. Excess disaster payments on budgetary emergency requirements**

Beginning in fiscal year 1993, and in each year thereafter, notwithstanding any other provision of law, all amounts appropriated for disaster assistance payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) that are in excess of either the historical annual average obligation of \$320,000,000, or the amount submitted in the President's initial budget request, whichever is lower, shall be considered as "emergency requirements" pursuant to section 901(b)(2)(D) of Title 2, and such amounts shall hereafter be so designated.

§5204. Insular areas disaster survival and recovery; definitions

As used in sections 5204 to 5204c of this title—

- (1) the term "insular area" means any of the following: American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands;
- (2) the term "disaster" means a declaration of a major disaster by the President after September 1, 1989, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170); and
- (3) the term "Secretary" means the Secretary of the Interior.

§5204a. Authorization of appropriations for insular areas

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to—

- (1) reconstruct essential public facilities damaged by disasters in the insular areas that occurred prior to February 24, 1992; and
- (2) enhance the survivability of essential public facilities in the event of disasters in the insular areas, except that with respect to the disaster declared by the President in the case of Hurricane Hugo, September 1989, amounts for any fiscal year shall not exceed 25 percent of the estimated aggregate amount of grants to be made under sections 403 and 406 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172) for such disaster. Such sums shall remain available until expended.

§5204b. Technical assistance for insular areas

(a) Presidential assessment of response capability; recovery plans. Upon the declaration by the President of a disaster in an insular area, the President, acting through the Director of the Federal Emergency Management Agency, shall assess, in cooperation with the Secretary and chief executive of such insular area, the capability of the insular government to respond to the disaster, including the capability to assess damage; coordinate activities with Federal agencies, particularly the Federal Emergency Management Agency; develop recovery plans, including recommendations for enhancing the survivability of essential infrastructure; negotiate and manage reconstruction contracts; and prevent the misuse of funds. If the President finds that the insular government lacks any of these or other capabilities essential to the recovery effort, then the President shall provide technical assistance to the insular area which the President deems necessary for the recovery effort.

(b) Report to Congress. One year following the declaration by the President of a disaster in an insular area, the Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall submit to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs a report on the status of the recovery effort, including an audit of Federal funds expended in the recovery effort and recommendations on how to improve public health and safety, survivability of infrastructure, recovery efforts, and effective use of funds in the event of future disasters.

§5204c. Hazard mitigation for insular areas

The total of contributions under the last sentence of section 404 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c) for the insular areas shall not exceed 10 percent of the estimated aggregate amounts of grants to be made under sections 403, 406, 407, 408, and 411 of such Act [42 U.S.C. 5170b, 5172, 5173, 5174, and 5178] for any disaster: Provided, That the President shall require a 50 percent local match for assistance in excess of 10 percent of the estimated amount of grants to be made under section 406 of such Act [42 U.S.C. 5172] for any disaster.

Appendix C

44 CFR Part 206 Subparts C and G-L

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Subpart C-Emergency Assistance

Source: 55 FR 2296, Jan. 23, 1990, unless otherwise noted.

§ 206.61 Purpose.

The purpose of this subpart is to identify the forms of assistance which may be made available under an emergency declaration.

§ 206.62 Available Assistance.

In any emergency declaration, the Associate Director or Regional Director may provide assistance, as follows:

- (a) Direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe;
- (b) Coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;
- (c) Provide technical and advisory assistance to affected State and local governments for:
 - (1) The performance of essential community services;
 - (2) Issuance of warnings of risks or hazards;
 - (3) Public health and safety information, including dissemination of such information;
 - (4) Provision of health and safety measures; and
 - (5) Management, control, and reduction of immediate threats to public health and safety;
- (d) Provide emergency assistance under the Stafford Act through Federal agencies;
- (e) Remove debris in accordance with the terms and conditions of section 407 of the Stafford Act;
- (f) Provide temporary housing assistance in accordance with the terms and conditions of section 408 of the Stafford Act; and

- (g) Assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

§ 206.63 Provision of Assistance.

Assistance authorized by an emergency declaration is limited to immediate and short-term assistance, essential to save lives, to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

§ 206.64 Coordination of Assistance.

After an emergency declaration by the President, all Federal agencies, voluntary organizations, and State and local governments providing assistance shall operate under the coordination of the Federal Coordinating Officer.

§ 206.65 Cost Sharing.

The Federal share for assistance provided under this title shall not be less than 75 percent of the eligible costs.

§ 206.66 Limitation on Expenditures.

Total assistance provided in any given emergency declaration may not exceed \$5,000,000, except when it is determined by the Associate Director that:

- (a) Continued emergency assistance is immediately required;
- (b) There is a continuing and immediate risk to lives, property, public health and safety; and
- (c) Necessary assistance will not otherwise be provided on a timely basis.

§ 206.67 Requirement when Limitation is Exceeded.

Whenever the limitation described in § 206.66 is exceeded, the Director must report to the Congress on the nature and extent of continuing emergency assistance requirements and shall propose additional legislation if necessary.

§§ 206.68-206.100 [Reserved]**Subpart G-Public Assistance Project Administration**

Source: 55 FR 2304, Jan. 23, 1990, unless otherwise noted.

§ 206.200 General.

- (a) Purpose. This subpart establishes procedures for the administration of Public Assistance grants approved under the provisions of the Stafford Act.
- (b) Policy. It is a requirement of the Stafford Act that, in the administration of the Public Assistance Program, eligible assistance be delivered as expeditiously as possible consistent with Federal laws and regulations. The regulation entitled “Uniform Requirements for Grants and Cooperative Agreements to State and Local Governments”, published at 44 CFR part 13, places certain requirements on the State in its role as grantee for the public assistance program. The intent of this “common rule” is to allow States more discretion in administering Federal programs in accordance with their own procedures and thereby simplify the program and reduce delays. FEMA also expects States to make subgrants with the requirements of the Stafford Act in mind. They are expected to keep subgrantees informed as to the status of their application including notification of FEMA’s approvals of DSRs and an estimate of when payments will be made. Subgrantees should receive the full payment approved by FEMA, and the State

contribution, as provided in the FEMA-State Agreement, as soon as practicable after payment is approved. Payment of the State contribution must be consistent with State laws.

§ 206.201 Definitions.

- (a) Applicant means a State agency, local government, or eligible private nonprofit organization, as identified in Subpart H of this regulation, submitting an application to the Grantee for assistance under the State's grant.
- (b) Emergency work means that work which must be done immediately to save lives and to protect improved property and public health and safety, or to avert or lessen the threat of a major disaster.
- (c) Facility means any publicly or privately owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.
- (d) Grant means an award of financial assistance. The grant award shall be based on the total eligible Federal share of all approved projects.
- (e) Grantee means the government to which a grant is awarded which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. For purposes of this regulation, except as noted in Sec. 206.202, the State is the grantee.
- (f) Hazard mitigation means any cost effective measure which will reduce the potential for damage to a facility from a disaster event.
- (g) Permanent work means that restorative work that must be performed through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and current applicable standards.
- (h) Predisaster design means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the

major disaster occurred if different from the most recent designed capacity.

- (i) Project (also referred to as individual project) means all work performed at a single site whether or not described on a single Damage Survey Report (DSR).
- (j) Project approval means the process where the RD signs an approval of work and costs on a DSR or group of DSRs. Such approval is also an obligation of funds to the grantee.
- (k) Subgrant means an award of financial assistance under a grant by a grantee to an eligible subgrantee.
- (l) Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

§ 206.202 Application Procedures.

- (a) General. This section describes the policies and procedures for processing grants for Federal disaster assistance to States. For purposes of this regulation the State is the grantee. The State is responsible for processing subgrants to applicants in accordance with 44 CFR parts 13, 14, and 206, and its own policies and procedures.
- (b) Grantee. The Grantee serves as the grant administrator for all funds provided under the Public Assistance grant program. The Grantee's responsibilities as they pertain to procedures outlined in this section include providing technical advice and assistance to eligible subgrantees, providing State support for damage survey activities, ensuring that all potential applicants are aware of assistance available, and submission of those documents necessary for grants award.
- (c) Notice of Interest (NOI). The Grantee must submit to the RD a completed NOI (FEMA Form 90-49) for each applicant requesting assistance. NOIs must be submitted to the RD within 30 days following designation of the area in which the damage is located.
- (d) Damage Survey Reports (DSRs).
 - (1) Damage surveys are conducted by an inspection team. An authorized local representative accompanies the inspection

team and is responsible for representing the applicant and ensuring that all eligible work and costs are identified. The inspectors prepare a Damage Survey Report-Data Sheet (FEMA Form 90-91) for each site. On the Damage Survey Report-Data Sheet the inspectors will identify the eligible scope of work and prepare a quantitative estimate for the eligible work. Any damage that is not shown to the inspection team during its initial visit shall be reported in writing to the Regional Director by the Grantee within 60 days after the initial visit.

- (2) When the estimate of work at a damage site is less than \$1000, such work is not eligible and a DSR will not be written. This minimum amount for a DSR shall be reviewed periodically by FEMA and adjusted through regulation as necessary.
- (e) Grant approval. Upon completion of the field surveys the Damage Survey Report-Data Sheets are reviewed and action is taken by the Regional Director (RD). This will be done within 45 days of the date of inspection or a written explanation of any delay will be provided to the grantee. Prior to the obligation of any funds the Grantee shall submit a Standard Form (SF) 424, Application for Federal Assistance, and SF 424D, Assurances for Construction Programs, to the RD. Following receipt of the SF 424 and 424D, the RD will then obligate funds to the State based upon the approved DSRs. The grantee shall then approve subgrants to the applying entities based upon DSRs approved for each applicant.
- (f) Exceptions. The following are exceptions to the above outlined procedures and time limitations.
 - (1) Grant applications. An Indian tribe or authorized tribal organization may submit a SF 424 directly to the RD when assistance is authorized under the Act and a State is legally unable to assume the responsibilities prescribed in these regulations.
 - (2) Time limitations. The time limitations shown in paragraphs (c) and (d) of this section may be extended by the RD when justified and requested in writing by the Grantee. Such justification shall be based on extenuating

circumstances beyond the grantee's or subgrantee's control.

(Approved by the Office of Management and Budget under Control Numbers 3067-0033 and 0348-0043.)

[55 FR 2304, Jan. 23, 1990, as amended at 58 FR 47996, Sept. 14, 1993]

§ 206.203 Federal Grant Assistance.

- (a) General. This section describes the types and extent of Federal funding available under State disaster assistance grants, as well as limitations and special procedures applicable to each.
- (b) Cost sharing. All projects approved under State disaster assistance grants will be subject to the cost sharing provisions established in the FEMA-State Agreement and the Stafford Act.
- (c) Project funding
 - (1) Large projects. When the approved estimate of eligible costs for an individual project is \$35,000 or greater, Federal funding shall equal the Federal share of the actual eligible costs documented by a grantee. Such \$35,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.
 - (2) Small projects. When the approved estimate of costs for an individual project is less than \$35,000, Federal funding shall equal the Federal share of the approved estimate of eligible costs. Such \$35,000 amount shall be adjusted annually as indicated in paragraph (c)(1) of this section.
- (d) Funding options
 - (1) Improved projects. If a subgrantee desires to make improvements, but still restore the predisaster function of a damaged facility, the Grantee's approval must be obtained. Federal funding for such improved projects shall be limited to the Federal share of the approved estimate of eligible costs.

- (2) Alternate projects. In any case where a subgrantee determines that the public welfare would not be best served by restoring a damaged public facility or the function of that facility, the Grantee may request that the RD approve an alternate project.
- (i) The alternate project option may be taken only on permanent restorative work.
 - (ii) Federal funding for such alternate projects shall equal 90 percent of the Federal share of the approved estimate of eligible costs.
 - (iii) Funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures. These funds may not be used to pay the non-Federal share of any project, nor for any operating expense.
 - (iv) Prior to the start of construction of any alternate project the Grantee shall submit for approval by the RD the following: a description of the proposed alternate project(s); a schedule of work; and the projected cost of the project(s). The Grantee shall also provide the necessary assurances to document compliance with special requirements, including, but not limited to floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

§ 206.204 Project Performance.

- (a) General. This section describes the policies and procedures applicable during the performance of eligible work.
- (b) Advances of funds. Advances of funds will be made in accordance with 44 CFR 13.21, Payment.
- (c) Time limitations for completion of work
 - (1) Deadlines. The project completion deadlines shown below are set from the date that a major disaster or emergency is declared and apply to all projects approved under State disaster assistance grants.

Completion Deadlines

Type of Work	Months
Debris Clearance	6
Emergency Work	6
Permanent Work	18

- (2) Exceptions.
- (i) The Grantee may impose lesser deadlines for the completion of work under paragraph (c)(1) of this section if considered appropriate.
 - (ii) Based on extenuating circumstances or unusual project requirements beyond the control of the subgrantee, the Grantee may extend the deadlines under paragraph (c)(1) of this section for an additional 6 months for debris clearance and emergency work and an additional 30 months, on a project by project basis for permanent work.
- (d) Requests for time extensions. Requests for time extensions beyond the Grantee's authority shall be submitted by the Grantee to the RD and shall include the following:
- (1) The dates and provisions of all previous time extensions on the project; and
 - (2) A detailed justification for the delay and a projected completion date. The RD shall review the request and make a determination. The Grantee shall be notified of the RD's determination in writing. If the RD approves the request, the letter shall reflect the approved completion date and any other requirements the RD may determine necessary to ensure that the new completion date is met. If the RD denies the time extension request, the grantee may, upon completion of the project, be reimbursed for eligible project costs incurred only up to the latest approved completion date. If the project is not completed, no Federal funding will be provided for that project.

(e) Cost overruns.

(1) During the execution of approved work a subgrantee may find that actual project costs are exceeding the approved DSR estimates. Such cost overruns normally fall into the following three categories:

- (i) Variations in unit prices;
- (ii) Change in the scope of eligible work; or
- (iii) Delays in timely starts or completion of eligible work.

(2) The subgrantee shall evaluate each cost overrun and, when justified, submit a request for additional funding through the grantee to the RD for a final determination. All requests for the RD's approval shall contain sufficient documentation to support the eligibility of all claimed work and costs. The grantee shall include a written recommendation when forwarding the request. The RD shall notify the Grantee in writing of the final determination. FEMA will not normally review an overrun for an individual small project. The normal procedure for small projects will be that when a subgrantee discovers a significant overrun related to the total final cost for all small projects, the subgrantee may submit an appeal for additional funding in accordance with Sec. 206.206 below, within 60 days following the completion of all of its small projects.

(f) Progress reports. Progress reports will be submitted by the Grantee to the RD quarterly. The RD and Grantee shall negotiate the date for submission of the first report. Such reports will describe the status of those projects on which a final payment of the Federal share has not been made to the grantee and outline any problems or circumstances expected to result in noncompliance with the approved grant conditions.

[55 FR 2304, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990]

§ 206.205 Payment of Claims.

(a) Small projects. Final payment of the Federal share of these projects shall be made to the Grantee upon approval of the project. The grantee shall make payment of the Federal share

to the subgrantee as soon as practicable after Federal approval of funding. Prior to the closeout of the disaster contract, the Grantee shall certify that all such projects were completed in accordance with FEMA approvals and that the State contribution to the non-Federal share, as specified in the FEMA-State Agreement, has been paid to each subgrantee. Such certification is not required to specify the amount spent by a subgrantee on small projects. The Federal payment for small projects shall not be reduced if all of the approved funds are not spent to complete a project. However, failure to complete a project may require that the Federal payment be refunded.

(b) Large projects.

- (1) The Grantee shall make an accounting to the RD of eligible costs for each approved large project. In submitting the accounting the Grantee shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the project is in compliance with the provisions of the FEMA-State Agreement, and that payments for that project have been made in accordance with 44 CFR 13.21, Payments. Each large project shall be submitted as soon as practicable after the subgrantee has completed the approved work and requested payment.
- (2) The RD shall review the accounting to determine the eligible amount of reimbursement for each large project and approve eligible costs. If a discrepancy between reported costs and approved funding exists, the RD may conduct field reviews to gather additional information. If discrepancies in the claim cannot be resolved through a field review, a Federal audit may be conducted. If the RD determines that eligible costs exceed the initial approval, he/she will obligate additional funds as necessary.

§ 206.206 Appeals.

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the procedures below.

- (a) **Format and Content.** The applicant or subgrantee will make the appeal in writing through the grantee to the Regional Director. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Director. The grantee may make grantee-related appeals to the Regional Director. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.
- (b) **Levels of Appeal.**
 - (1) The Regional Director will consider first appeals for public assistance-related decisions under subparts A through L of this part.
 - (2) The Associate Director/Executive Associate Director for Response and Recovery will consider appeals of the Regional Director's decision on any first appeal under paragraph (b)(1) of this section.
- (c) **Time Limits.**
 - (1) Appellants must file appeals within 60 days after receipt of a notice of the action that is being appealed.
 - (2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Director within 60 days of receipt.
 - (3) Within 90 days following receipt of an appeal, the Regional Director (for first appeals) or Associate Director/Executive Associate Director (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Director or Associate Director/Executive Associate Director for additional information will include a date by which the information must be provided. Within 90 days

following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Director or Associate Director/ Executive Associate Director will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.

- (d) Technical Advice. In appeals involving highly technical issues, the Regional Director or Associate Director/Executive Associate Director may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal.
- (e) Transition.
 - (1) This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.
 - (2) Appeals pending from a decision of an Associate Director/ Executive Associate Director before May 8, 1998 may be appealed to the Director in accordance with 44 CFR 206.440 as it existed before May 8, 1998 (44 CFR, revised as of October 1, 1997).
 - (3) The decision of the FEMA official at the next higher appeal level shall be the final administrative decision of FEMA.

[63 FR 17110, Apr. 8, 1998; 63 FR 24970, May 6, 1998]

§ 206.207 Administrative and Audit Requirements.

- (a) General. Uniform administrative requirements which are set forth in 44 CFR part 13 apply to all disaster assistance grants and subgrants.

(b) State administrative plan.

- (1) The State shall develop a plan for the administration of the Public Assistance program that includes at a minimum, the items listed below:
 - (i) The designation of the State agency or agencies which will have the responsibility for program administration.
 - (ii) The identification of staffing functions in the Public Assistance program, the sources of staff to fill these functions, and the management and oversight responsibilities of each.
 - (iii) Procedures for:
 - (A) Notifying potential applicants of the availability of the program;
 - (B) Conducting briefings for potential applicants and application procedures, program eligibility guidance and program guidelines;
 - (C) Assisting FEMA in determining applicant eligibility;
 - (D) Assisting FEMA in conducting damage surveys to serve as a basis for obligations of funds to subgrantees;
 - (E) Participating with FEMA in conducting damage surveys to serve as a basis for obligations of funds to subgrantees;
 - (F) Processing appeal requests, requests for time extensions and requests for approval of overruns, and for processing appeals of grantee decisions;
 - (G) Compliance with the administrative requirements of 44 CFR parts 13 and 206;
 - (H) Compliance with the audit requirements of 44 CFR part 14;
 - (I) Processing requests for advances of funds and reimbursement; and
 - (J) Determining staffing and budgeting requirements necessary for proper program management.

- (2) The Grantee may request the RD to provide technical assistance in the preparation of such administrative plan.
 - (3) In accordance with the Interim Rule published March 21, 1989, the Grantee was to have submitted an administrative plan to the RD for approval by September 18, 1989. An approved plan must be on file with FEMA before grants will be approved in a future major disaster. Thereafter, the Grantee shall submit a revised plan to the RD annually. In each disaster for which Public Assistance is included, the RD shall request the Grantee to prepare any amendments required to meet current policy guidance.
 - (4) The Grantee shall ensure that the approved administrative plan is incorporated into the State emergency plan.
- (c) Audit
- (1) Non-federal audit. For grantees or subgrantees, requirements for non-federal audit are contained in FEMA regulations at 44 CFR Part 14 or OMB Circular A§09110 as appropriate.
 - (2) Federal audit. In accordance with 44 CFR part 14, Appendix A, Para. 10, FEMA may elect to conduct a Federal audit of the disaster assistance grant or any of the subgrants.

[55 FR 2304, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990]

§ 206.208 Direct Federal Assistance.

- (a) General. When the State and local government lack the capabilities to perform or to contract for eligible emergency work and/or debris removal, under sections 402(4), 403, or 407 of the Act, the Grantee may request that the work be accomplished by a Federal agency. Such assistance is subject to the cost sharing provisions outlined in §206.203(b) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart H of these regulations. FEMA will reimburse other Federal agencies in accordance with Subpart A of these regulations.

- (b) Requests for assistance. All requests for direct Federal assistance shall be submitted by the Grantee to the RD and shall include:
- (1) A written agreement that the State will:
 - (i) Provide without costs to the United States all lands, easements and rights-of-ways necessary to accomplish the approved work;
 - (ii) Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work;
 - (iii) Provide reimbursement to FEMA for the non-Federal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement; and
 - (iv) Assist the performing Federal agency in all support and local jurisdictional matters.
 - (2) A statement as to the reasons the State and the local government cannot perform or contract for performance of the requested work.
 - (3) A written agreement from an eligible applicant that such applicant will be responsible for the items in subparagraph (b)(1)(i) and (ii) of this section, in the event that a State is legally unable to provide the written agreement.
- (c) Implementation.
- (1) If the RD approves the request, a mission assignment will be issued to the appropriate Federal agency. The mission assignment letter to the agency shall define the scope of eligible work. Prior to execution of work on any project, the RD shall prepare a DSR establishing the scope and estimated costs of eligible work. The Federal agency shall not exceed the approved funding limit without the authorization of the RD.
 - (2) If all or any part of the requested work falls within the statutory authority of another Federal agency, the RD shall not approve that portion of the work. In such case, the unapproved portion of the request will be referred to the appropriate agency for action.

- (d) Time limitation. The time limitation for completion of work by a Federal agency under a mission assignment is 60 days after the President's declaration. Based on extenuating circumstances or unusual project requirements, the RD may extend this time limitation.
- (e) Project management.
 - (1) The performing Federal agency shall ensure that the work is completed in accordance with the RD's approved scope of work, costs and time limitations. The performing Federal agency shall also keep the RD and Grantee advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable Federal, State and local requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports shall be signed by a representative of the performing Federal agency and the State. Once the final eligible cost is determined (including Federal agency overhead), the State will be billed for the non-Federal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement.
 - (2) Pursuant to the agreements provided in the request for assistance the Grantee shall assist the performing Federal agency in all State and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic and pedestrians, and compliance with local building ordinances.

§§ 206.209-206.219 [Reserved]

Subpart H-Public Assistance Eligibility

Source: 55 FR 2307, Jan. 23, 1990, unless otherwise noted.

§ 206.220 General

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502 and 503 of the Stafford Act. Assistance under this subpart must also conform to requirements of 44 CFR part 206, subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Hazard Mitigation Planning. Regulations under 44 CFR part 9—Floodplain Management and 44 CFR part 10—Environmental Considerations, also apply to this assistance.

§ 206.221 Definitions.

- (a) Educational institution means:
 - (1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; or
 - (2) Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or
 - (3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.
- (b) Force account means an applicant's own labor forces and equipment.
- (c) Immediate threat means the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years.
- (d) Improved property means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.
- (e) Private nonprofit facility means any private nonprofit educational, utility, emergency, medical, or custodial care

facility, including a facility for the aged or disabled, and other facility providing essential governmental type services to the general public, and such facilities on Indian reservations.

Further definition is as follows:

- (1) Educational facilities means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include buildings, structures and related items used primarily for religious purposes or instruction.
- (2) Utility means buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities.
- (3) Emergency facility means those buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities even if not contiguous.
- (4) Medical facility means any hospital, outpatient facility, rehabilitation facility, or facility for long term care as such terms are defined in section 645 of the Public Health Service Act (42 U.S.C. 2910) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.
- (5) Custodial care facility means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.
- (6) Other essential governmental service facility means museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and

safety services of a governmental nature. All such facilities must be open to the general public.

- (f) Private nonprofit organization means any non-governmental agency or entity that currently has:
 - (1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or
 - (2) Satisfactory evidence from the State that the non-revenue producing organization or entity is a nonprofit one organized or doing business under State law.
- (g) Public entity means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.
- (h) Public facility means the following facilities owned by a State or local government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid, street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.
- (i) Standards means codes, specifications or standards required for the construction of facilities.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47994, Sept. 14, 1993]

§ 206.222 Applicant Eligibility.

The following entities are eligible to apply for assistance under the State public assistance grant:

- (a) State and local governments.
- (b) Private non-profit organizations or institutions which own or operate a private nonprofit facility as defined in Sec. 205.221(e).
- (c) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska Native Corporations, the ownership of which is vested in private individuals.

§ 206.223 General Work Eligibility.

- (a) General. To be eligible for financial assistance, an item of work must:
 - (1) Be required as the result of the major disaster event,
 - (2) Be located within a designated disaster area, and
 - (3) Be the legal responsibility of an eligible applicant.
- (b) Private nonprofit facilities. To be eligible, all private nonprofit facilities must be owned and operated by an organization meeting the definition of a private nonprofit organization [see Sec. 206.221(f)].
- (c) Public entities. Facilities belonging to a public entity may be eligible for assistance when the application is submitted through the State or a political subdivision of the State.
- (d) Facilities serving a rural community or unincorporated town or village. To be eligible for assistance, a facility not owned by an eligible applicant, as defined in Sec. 206.222, must be owned by a private nonprofit organization; and provide an essential governmental service to the general public. Applications for these facilities must be submitted through a State or political subdivision of the State.
- (e) Negligence. No assistance will be provided to an applicant for damages caused by its own negligence. If negligence by another party results in damages, assistance may be provided, but will be conditioned on agreement by the applicant to cooperate with FEMA in all efforts necessary to recover the cost of such assistance from the negligent party.

§ 206.224 Debris Removal.

- (a) Public interest. Upon determination that debris removal is in the public interest, the Regional Director may provide assistance for the removal of debris and wreckage from publicly and privately owned lands and waters. Such removal is in the public interest when it is necessary to:
 - (1) Eliminate immediate threats to life, public health, and safety;
 - or

- (2) Eliminate immediate threats of significant damage to improved public or private property; or
 - (3) Ensure economic recovery of the affected community to the benefit of the community-at-large.
- (b) Debris removal from private property. When it is in the public interest for an eligible applicant to remove debris from private property in urban, suburban and rural areas, including large lots, clearance of the living, recreational and working area is eligible except those areas used for crops and livestock or unused areas.
- (c) Assistance to individuals and private organizations. No assistance will be provided directly to an individual or private organization, or to an eligible applicant for reimbursement of an individual or private organization, for the cost of removing debris from their own property. Exceptions to this are those private nonprofit organizations operating eligible facilities.

§ 206.225 Emergency Work.

- (a) General.
 - (1) Emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible.
 - (2) In determining whether emergency work is required, the Regional Director may require certification by local State, and/or Federal officials that a threat exists, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.
 - (3) In order to be eligible, emergency protective measures must:
 - (i) Eliminate or lessen immediate threat to lives, public health or safety; or
 - (ii) Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective.

- (b) Emergency access. An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant for repair or maintenance may be eligible for emergency repairs or replacement provided that emergency repair or replacement of the facility economically eliminates the need for temporary housing. The work will be limited to that necessary for the access to remain passable through events which can be considered an immediate threat. The work must be performed by an eligible applicant and will be subject to cost sharing requirements.
- (c) Emergency communications. Emergency communications necessary for the purpose of carrying out disaster relief functions may be established and may be made available to State and local government officials as deemed appropriate. Such communications are intended to supplement but not replace normal communications that remain operable after a major disaster. FEMA funding for such communications will be discontinued as soon as the needs have been met.
- (d) Emergency public transportation. Emergency public transportation to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible is eligible. Such transportation is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA funding for such transportation will be discontinued as soon as the needs have been met.

§ 206.226 Restoration of Damaged Facilities.

Work to restore eligible facilities on the basis of the design of such facilities as they existed immediately prior to the disaster and in conformity with the following is eligible:

- (a) Assistance under other Federal agency (OFA) programs.
 - (1) Generally, disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.

- (2) An exception to the policy described in paragraph (a)(1) of this section exists for public elementary and secondary school facilities which are otherwise eligible for assistance from the Department of Education (ED) under 20 U.S.C. 241-1 and 20 U.S.C. 646. Such facilities are also eligible for assistance from FEMA under the Stafford Act, and grantees shall accept applications from local educational agencies for assistance under the Stafford Act.
 - (3) The exception does not cover payment of increased current operating expenses or replacement of lost revenues as provided in 20 U.S.C. 241-1(a) and implemented by 34 CFR 219.14. Such assistance shall continue to be granted and administered by the Department of Education.
- (b) Standards. For the costs of Federal, State, and local repair or replacement standards which change the predisaster construction of facility to be eligible, the standards must:
 - (1) Apply to the type of repair or restoration required; (Standards may be different for new construction and repair work)
 - (2) Be appropriate to the predisaster use of the facility;
 - (3) (i) Be found reasonable, in writing, and formally adopted and implemented by the State or local government on or before the disaster declaration date or be a legal Federal requirement applicable to the type of restoration.
 - (ii) This paragraph (b) applies to local governments on January 1, 1999 and to States on January 1, 2000. Until the respective applicability dates, the standards must be in writing and formally adopted by the applicant prior to project approval or be a legal Federal or State requirement applicable to the type of restoration.
 - (4) Apply uniformly to all similar types of facilities within the jurisdiction of owner of the facility; and
 - (5) For any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect.
- (c) Hazard mitigation. In approving grant assistance for restoration of facilities, the Regional Director may require cost effective hazard mitigation measures not required by applicable

standards. The cost of any requirements for hazard mitigation placed on restoration projects by FEMA will be an eligible cost for FEMA assistance.

(d) Repair vs. replacement.

- (1) A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.
- (2) If a damaged facility is not repairable in accordance with paragraph (d)(1) of this section, approved restorative work may include replacement of the facility. The applicant may elect to perform repairs to the facility, in lieu of replacement, if such work is in conformity with applicable standards. However, eligible costs shall be limited to the less expensive of repairs or replacement.
- (3) An exception to the limitation in paragraph (d)(2) of this section may be allowed for facilities eligible for or on the National Register of Historic Properties. If an applicable standard requires repair in a certain manner, costs associated with that standard will be eligible.

(e) Relocation.

- (1) The Regional Director may approve funding for and require restoration of a destroyed facility at a new location when:
 - (i) The facility is and will be subject to repetitive heavy damage;
 - (ii) The approval is not barred by other provisions of title 44 CFR; and
 - (iii) The overall project, including all costs, is cost effective.
- (2) When relocation is required by the Regional Director, eligible work includes land acquisition and ancillary facilities such as roads and utilities, in addition to work normally eligible as part of a facility reconstruction. Demolition and removal of the old facility is also an eligible cost.
- (3) When relocation is required by the Regional Director, no future funding for repair or replacement of a facility at the

original site will be approved, except those facilities which facilitate an open space use in accordance with 44 CFR part 9.

- (4) When relocation is required by the Regional Director, and, instead of relocation, the applicant requests approval of an alternate project [see Sec. 206.203(d)(2)], eligible costs will be limited to 90 percent of the estimate of restoration at the original location excluding hazard mitigation measures.
- (5) If relocation of a facility is not feasible or cost effective, the Regional Director shall disapprove Federal funding for the original location when he/she determines in accordance with 44 CFR part 9, 44 CFR part 10, or 44 CFR part 206, subpart M, that restoration in the original location is not allowed. In such cases, an alternate project may be applied for.
- (f) Equipment and furnishings. If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items.
- (g) Library books and publications. Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible.
- (h) Beaches.
 - (1) Replacement of sand on an unimproved natural beach is not eligible.
 - (2) Improved beaches. Work on an improved beach may be eligible under the following conditions:
 - (i) The beach was constructed by the placement of sand (of proper grain size) to a designed elevation, width, and slope; and
 - (ii) A maintenance program involving periodic renourishment of sand must have been established and adhered to by the applicant.
- (i) Restrictions
 - (1) Alternative use facilities. If a facility was being used for purposes other than those for which it was designed,

restoration will only be eligible to the extent necessary to restore the immediate predisaster alternate purpose.

- (2) Inactive facilities. Facilities that were not in active use at the time of the disaster are not eligible except in those instances where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget or the owner can demonstrate to FEMA's satisfaction an intent to begin use within a reasonable time.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 55022, Oct. 25, 1993; 63 FR 5897, Feb. 5, 1998]

§ 206.227 Snow Assistance.

Emergency or major disaster declarations based on snow or blizzard conditions will be made only for cases of record or near record snowstorms, as established by official government records. Federal assistance will be provided for all costs eligible under 44 CFR 206.225 for a specified period of time which will be determined by the circumstances of the event.

[62 FR 45330, Aug. 27, 1997]

§ 206.228 Allowable Costs.

General policies for determining allowable costs are established in 44 CFR 13.22. Exceptions to those policies as allowed in 44 CFR 13.4 and 13.6 are explained below.

(a) Eligible direct costs

- (1) Applicant-owned equipment. Reimbursement for ownership and operation costs of applicant-owned equipment used to perform eligible work shall be provided in accordance with the following guidelines:
 - (i) Rates established under State guidelines. In those cases where an applicant uses reasonable rates which have been established or approved under State guidelines, in its normal daily operations, reimbursement for applicant-owned equipment which

has an hourly rate of \$75 or less shall be based on such rates. Reimbursement for equipment which has an hourly rate in excess of \$75 shall be determined on a case by case basis by FEMA.

- (ii) Rates established under local guidelines. Where local guidelines are used to establish equipment rates, reimbursement will be based on those rates or rates in a Schedule of Equipment Rates published by FEMA, whichever is lower. If an applicant certifies that its locally established rates do not reflect actual costs, reimbursement may be based on the FEMA Schedule of Equipment Rates, but the applicant will be expected to provide documentation if requested. If an applicant wishes to claim an equipment rate which exceeds the FEMA Schedule, it must document the basis for that rate and obtain FEMA approval of an alternate rate.
- (iii) No established rates. The FEMA Schedule of Equipment Rates will be the basis for reimbursement in all cases where an applicant does not have established equipment rates.

(2) Statutory Administrative Costs.

- (i) Grantee. Pursuant to section 406(f)(2) of the Stafford Act, an allowance will be provided to the State to cover the extraordinary costs incurred by the State for preparation of damage survey reports, final inspection reports, project applications, final audits, and related field inspections by State employees including overtime pay and per diem and travel expenses, but not including regular time for such employees. The allowance will be based on the following percentages of the total amount of assistance provided (Federal share) for all subgrantees in the State under sections 403, 406, 407, 502, and 503 of the Act:
 - (A) For the first \$100,000 of total assistance provided (Federal share), three percent of such assistance.
 - (B) For the next \$900,000, two percent of such assistance.

- (C) For the next \$4,000,000, one percent of such assistance.
 - (D) For assistance over \$5,000,000, one-half percent of such assistance.
- (ii) Subgrantee. Pursuant to section 406(f)(1) of the Stafford Act, necessary costs of requesting, obtaining, and administering Federal disaster assistance subgrants will be covered by an allowance which is based on the following percentages of net eligible costs under sections 403, 406, 407, 502, and 503 of the Act, for an individual applicant (applicants in this context include State agencies):
 - (A) For the first \$100,000 of net eligible costs, three percent of such costs.
 - (B) For the next \$900,000, two percent of such costs.
 - (C) For the next \$4,000,000, one percent of such costs.
 - (D) For assistance over \$5,000,000, one-half percent of such costs.
- (3) State Management Administrative Costs.
 - (i) Grantee. Except for the items listed in paragraph (a)(2)(i) of this section, other administrative costs shall be paid in accordance with 44 CFR 13.22.
 - (ii) Subgrantee. No other administrative costs of a subgrantee are eligible because the percentage allowance in paragraph (a)(2)(ii) of this section covers necessary costs of requesting, obtaining, and administering Federal assistance.
- (4) Force Account Labor Costs. The straight- or regular-time salaries and benefits of a subgrantee's permanently employed personnel are not eligible in calculating the cost of eligible work under sections 403 and 407 of the Stafford Act, 42 U.S.C. 5170b and 5173. For the performance of eligible permanent restoration under section 406 of the Act 42 U.S.C. 5172, straight-time salaries and benefits of a subgrantee's permanently employed personnel are eligible.
- (b) Eligible indirect costs.
 - (1) Grantee. Indirect costs of administering the disaster

program are eligible in accordance with the provisions of 44 CFR part 13 and OMB Circular A-87.

- (2) Subgrantee. No indirect costs of a subgrantee are separately eligible because the percentage allowance in paragraph (a)(2)(ii) of this section covers necessary costs of requesting, obtaining and administering Federal assistance.

[55 FR 2307, Jan 23, 1990, as amended at 58 FR 47996, Sept. 14, 1993]

§§ 206.229-206.249 [Reserved]

Subpart I-Public Assistance Insurance Requirements

Source: 56 FR 64560, Dec. 11, 1991, unless otherwise noted.

§ 206.250 General.

- (a) Sections 311 and 406(d) of the Stafford Act, and the Flood Disaster Protection Act of 1973, Public Law 93-234, set forth certain insurance requirements which apply to disaster assistance provided by FEMA. The requirements of this subpart apply to all assistance provided pursuant to section 406 of the Stafford Act with respect to any major disaster declared by the President after November 23, 1988.
- (b) Insurance requirements prescribed in this subpart shall apply equally to private nonprofit (PNP) facilities which receive assistance under section 406 of the Act. PNP organizations shall submit the necessary documentation and assurances required by this subpart to the Grantee.
- (c) Actual and anticipated insurance recoveries shall be deducted from otherwise eligible costs, in accordance with this subpart.
- (d) The full coverage available under the standard flood insurance policy from the National Flood Insurance Program (NFIP) will

be subtracted from otherwise eligible costs for a building and its contents within the special flood hazard area in accordance with Sec. 206.252.

- (e) The insurance requirements of this subpart should not be interpreted as a substitute for various hazard mitigation techniques which may be available to reduce the incidence and severity of future damage.

§ 206.251 Definitions.

- (a) Assistance means any form of a Federal grant under section 406 of the Stafford Act to replace, restore, repair, reconstruct, or construct any facility and/or its contents as a result of a major disaster.
- (b) Building means a walled and roofed structure, other than a gas, or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation.
- (c) Community means any State or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaskan Native Village or authorized native organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.
- (d) National Flood Insurance Program (NFIP) means the program authorized by the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.
- (e) Special flood hazard area means an area having special flood, mudslide, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary map (FHBM) or the Flood Insurance Rate Map (FIRM) issued by FEMA as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30 VE, V, M, or E. "Special flood hazard area" is synonymous with "special hazard area", as defined in 44 CFR part 59.
- (f) Standard Flood Insurance Policy means the flood insurance policy issued by the Federal Insurance Administrator, or by a Write-Your-Own Company pursuant to 44 CFR 62.23.

**§ 206.252 Insurance Requirements for Facilities
Damaged by Flood.**

- (a) Where an insurable building damaged by flooding is located in a special flood hazard area identified for more than one year by the Director, assistance pursuant to section 406 of the Stafford Act shall be reduced. The amount of the reduction shall be the maximum amount of the insurance proceeds which would have been received had the building and its contents been fully covered by a standard flood insurance policy.
- (b) The reduction stated above shall not apply to a PNP facility which could not be insured because it was located in a community not participating in the NFIP. However, the provisions of the Flood Disaster Protection Act of 1973 prohibit approval of assistance for the PNP unless the community agrees to participate in the NFIP within six months after the major disaster declaration date, and the required flood insurance is purchased.
- (c) Prior to approval of a Federal grant for the restoration of a facility and its contents which were damaged by a flood, the Grantee shall notify the Regional Director of any entitlement to an insurance settlement or recovery. The Regional Director shall reduce the eligible costs by the amount of insurance proceeds which the grantee receives.
- (d) The grantee or subgrantee is required to obtain and maintain flood insurance in the amount of eligible disaster assistance, as a condition of receiving Federal assistance that may be available. This requirement also applies to insurable flood damaged facilities located outside a special flood hazard area when it is reasonably available, adequate, and necessary. However, the Regional Director shall not require greater types and amounts of insurance than are certified as reasonable by the State Insurance Commissioner. The requirement to purchase flood insurance is waived when eligible costs for an insurable facility do not exceed \$5,000.

**§ 206.253 Insurance Requirements for Facilities
Damaged by Disasters Other than Floods.**

- (a) Prior to approval of a Federal grant for the restoration of a facility and its contents which were damaged by a disaster other than flood, the Grantee shall notify the Regional Director of any entitlement to insurance settlement or recovery for such facility and its contents. The Regional Director shall reduce the eligible costs by the actual amount of insurance proceeds relating to the eligible costs.
- (b)
 - (1) Assistance under section 406 of the Stafford Act will be approved only on the condition that the grantee obtain and maintain such types and amounts of insurance as are reasonable and necessary to protect against future loss to such property from the types of hazard which caused the major disaster. The extent of insurance to be required will be based on the eligible damage that was incurred to the damaged facility as a result of the major disaster. The Regional Director shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.
 - (2) Due to the high cost of insurance, some applicants may request to insure the damaged facilities under a blanket insurance policy covering all their facilities, an insurance pool arrangement, or some combination of these options. Such an arrangement may be accepted for other than flood damages. However, if the same facility is damaged in a similar future disaster, eligible costs will be reduced by the amount of eligible damage sustained on the previous disaster.
- (c) The Regional Director shall notify the Grantee of the type and amount of insurance required. The grantee may request that the State Insurance Commissioner review the type and extent of insurance required to protect against future loss to a disaster-damaged facility, the Regional Director shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.

- (d) The requirements of section 311 of the Stafford Act are waived when eligible costs for an insurable facility do not exceed \$5,000. The Regional Director may establish a higher waiver amount based on hazard mitigation initiatives which reduce the risk of future damages by a disaster similar to the one which resulted in the major disaster declaration which is the basis for the application for disaster assistance.
- (e) The Grantee shall provide assurances that the required insurance coverage will be maintained for the anticipated life of the restorative work or the insured facility, whichever is lesser.
- (f) No assistance shall be provided under section 406 of the Stafford Act for any facility for which assistance was provided as a result of a previous major disaster unless all insurance required by FEMA as a condition of the previous assistance has been obtained and maintained.

§§ 206.254-206.339 [Reserved]

Subpart J-Coastal Barrier Resources Act

Source: 55 FR 2311, Jan. 23, 1990, unless otherwise noted.

§ 206.340 Purpose of Subpart.

This subpart implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) as that statute applies to disaster relief granted to individuals and State and local governments under the Stafford Act. CBRA prohibits new expenditures and new financial assistance within the Coastal Barrier Resources System (CBRS) for all but a few types of activities identified in CBRA. This subpart specifies what actions may and may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by FEMA.

§ 206.341 Policy.

It shall be the policy of FEMA to achieve the goals of CBRA in carrying out disaster relief on units of the Coastal Barrier Resources System. It is FEMA's intent that such actions be consistent with the purpose of CBRA to minimize the loss of human life, the wasteful expenditure of Federal revenues, and the damage to fish, wildlife and other natural resources associated with coastal barriers along the Atlantic and Gulf coasts and to consider the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved under the Stafford Act.

§ 206.342 Definitions.

Except as otherwise provided in this subpart, the definitions set forth in part 206 of subchapter D are applicable to this subject.

- (a) Consultation means that process by which FEMA informs the Secretary of the Interior through his/her designated agent of FEMA proposed disaster assistance actions on a designated unit of the Coastal Barrier Resources System and by which the Secretary makes comments to FEMA about the appropriateness of that action. Approval by the Secretary is not required in order that an action be carried out.
- (b) Essential link means that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alternative route is reasonably available.
- (c) Existing facility on a unit of CBRS established by Public Law 97-348 means a publicly owned or operated facility on which the start of a construction took place prior to October 18, 1982, and for which this fact can be adequately documented. In addition, a legally valid building permit or equivalent documentation, if required, must have been obtained for the construction prior to October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility. For any other unit added to the CBRS

by amendment to Public Law 97-348, the enactment date of such amendment is substituted for October 18, 1982, in this definition.

- (d) Expansion means changing a facility to increase its capacity or size.
- (e) Facility means “public facility” as defined in Sec. 206.201. This includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; and nonfederal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes, or any park.
- (f) Financial assistance means any form of Federal loan, grant guaranty, insurance, payment rebate, subsidy or any other form of direct or indirect Federal assistance.
- (g) New financial assistance on a unit of the CBRS established by Public Law 97-348 means an approval by FEMA of a project application or other disaster assistance after October 18, 1982. For any other unit added to the CBRS by amendment to Public Law 97-348, the enactment date such amendment is substituted for October 18, 1982, in this definition.
- (h) Start of construction for a structure means the first placement of permanent construction, such as the placement of footings or slabs or any work beyond the stage of excavation. Permanent construction for a structure does not include land preparation such as clearing, grading, and placement of fill, nor does it include excavation for a basement, footings, or piers. For a facility which is not a structure, start of construction means the first activity for permanent construction of a substantial part of the facility. Permanent construction for a facility does not include land preparation such as clearing and grubbing but would include excavation and placement of fill such as for a road.
- (i) Structure means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.

- (j) Substantial improvement means any repair, reconstruction or other improvement of a structure or facility, that has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the market value of the structure or placement cost of the facility (including all “public facilities”) as defined in the Stafford Act) either:
 - (1) Before the repair or improvement is started; or
 - (2) If the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is a link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of that portion of the system which is operationally dependent on the facility. The term substantial improvement does not include any alternation of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.
- (k) System unit means any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers included within the Coastal Barrier Resources System as established by the section 4 of the CBRA, or as modified by the Secretary in accordance with that statute.

§ 206.343 Scope.

- (a) The limitations on disaster assistance as set forth in this subpart apply only to FEMA actions taken on a unit of the Coastal Barrier Resources System or any conduit to such unit, including, but not limited to a bridge, causeway, utility, or similar facility.
- (b) FEMA assistance having a social program orientation which is unrelated to development is not subject to the requirements of these regulations. This assistance includes:
 - (1) Individual and Family Grants that are not for acquisition or construction purposes;
 - (2) Crisis counseling;
 - (3) Disaster Legal services; and
 - (4) Disaster unemployment assistance.

§ 206.344 Limitations on Federal Expenditures.

Except as provided in Secs. 206.345 and 206.346, no new expenditures or financial assistance may be made available under authority of the Stafford Act for any purpose within the Coastal Barrier Resources System, including but not limited to:

- (a) Construction, reconstruction, replacement, repair or purchase of any structure, appurtenance, facility or related infrastructure;
- (b) Construction, reconstruction, replacement, repair or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and
- (c) Carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to Section 4 on maps numbered S01 through S08 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.

§ 206.345 Exceptions.

The following types of disaster assistance actions are exceptions to the prohibitions of Sec. 206.344.

- (a) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for:
 - (1) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;
 - (2) Repair of any facility necessary for the exploration, extraction, or transportation of energy resources which activity can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body; and

- (3) Restoration of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements.
- (b) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for the following types of actions, provided such assistance is consistent with the purposes of CBRA;
 - (1) Emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Stafford Act and are limited to actions that are necessary to alleviate the impacts of the event;
 - (2) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities, except as provided in Sec. 206.347(c)(5);
 - (3) Repair of air and water navigation aids and devices, and of the access thereto;
 - (4) Repair of facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;
 - (5) Repair of facilities for the study, management, protection and enhancement of fish and wildlife resources and habitats, including but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects; and
 - (6) Repair of nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

§ 206.346 Applicability to Disaster Assistance.

- (a) Emergency assistance. The Regional Director may approve assistance pursuant to sections 402, 403, or 502 of the Stafford Act, for emergency actions which are essential to the saving of lives and the protection of property and the public health and

safety, are necessary to alleviate the emergency, and are in the public interest. Such actions include but are not limited to:

- (1) Removal of debris from public property;
 - (2) Emergency protection measures to prevent loss of life, prevent damage to improved property and protect public health and safety;
 - (3) Emergency restoration of essential community services such as electricity, water or sewer;
 - (4) Provision of access to a private residence;
 - (5) Provision of emergency shelter by means of providing emergency repair of utilities, provision of heat in the season requiring heat, or provision of minimal cooking facilities;
 - (6) Relocation of individuals or property out of danger, such as moving a mobile home to an area outside of the CBRS (but disaster assistance funds may not be used to relocate facilities back into the CBRS);
 - (7) Home repairs to private owner-occupied primary residences to make them habitable;
 - (8) Housing eligible families in existing resources in the CBRS; and
 - (9) Mortgage and rental payment assistance.
- (b) Permanent restoration assistance. Subject to the limitations set out below, the Regional Director may approve assistance for the repair, reconstruction, or replacement but not the expansion of the following publicly owned or operated facilities and certain private nonprofit facilities.
- (1) Roads and bridges;
 - (2) Drainage structures, dams, levees;
 - (3) Buildings and equipment;
 - (4) Utilities (gas, electricity, water, etc.); and
 - (5) Park and recreational facilities.

§ 206.347 Requirements.

- (a) Location determination. For each disaster assistance action which is proposed on the Atlantic or Gulf Coasts, the Regional Director shall:
 - (1) Review a proposed action's location to determine if the action is on or connected to the CBRS unit and thereby subject to these regulations. The appropriate Department of Interior map identifying units of the CBRS will be the basis of such determination. The CBRS units are also identified on FEMA Flood Insurance Maps (FIRMs) for the convenience of field personnel.
 - (2) If an action is determined not to be on or connected to a unit of the CBRS, no further requirements of these regulations needs to be met, and the action may be processed under other applicable disaster assistance regulations.
 - (3) If an action is determined to be on or connected to a unit of the CBRS, it is subject to the consultation and consistency requirements of CBRA as prescribed in Secs. 206.348 and 206.349.
- (b) Emergency disaster assistance. For each emergency disaster assistance action listed in Sec. 206.346(a), the Regional Director shall perform the required consultation. CBRA requires that FEMA consult with the Secretary of the Interior before taking any action on a System unit. The purpose of such consultation is to solicit advice on whether the action is or is not one which is permitted by section 6 of CBRA and whether the action is or is not consistent with the purposes of CBRA as defined in section 1 of that statute.
 - (1) FEMA has conducted advance consultation with the Department of the Interior concerning such emergency actions. The result of the consultation is that the Secretary of the Interior through the Assistance Secretary for Fish and Wildlife and Parks has concurred that the emergency work listed in Sec. 206.346(a) is consistent with the purposes of CBRA and may be approved by FEMA without additional consultation.

- (2) Notification. As soon as practicable, the Regional Director will notify the designated Department of the Interior representative at the regional level of emergency projects that have been approved. Upon request from the Secretary of the Interior, the Associate Director, SLPS, or his or her designee will supply reports of all current emergency actions approved on CBRS units. Notification will contain the following information:
 - (i) Identification of the unit in the CBRS;
 - (ii) Description of work approved;
 - (iii) Amount of Federal funding; and
 - (iv) Additional measures required.
- (c) Permanent restoration assistance. For each permanent restoration assistance action including but not limited to those listed in Sec. 206.346(b), the Regional Director shall meet the requirements set out below.
 - (1) Essential links. For the repair or replacement of publicly owned or operated roads, structures or facilities which are essential links in a larger network or system:
 - (i) No facility may be expanded beyond its predisaster design.
 - (ii) Consultation in accordance with Sec. 206.348 shall be accomplished.
 - (2) Channel improvements. For the repair of existing channels, related structures and the disposal of dredged materials:
 - (i) No channel or related structure may be repaired, reconstructed, or replaced unless funds were appropriated for the construction of such channel or structure before October 18, 1982;
 - (ii) Expansion of the facility beyond its predisaster design is not permitted;
 - (iii) Consultation in accordance with Sec. 206.348 shall be accomplished.
 - (3) Energy facilities. For the repair of facilities necessary for the exploration, extraction or transportation of energy resources:

- (i) No such facility may be repaired, reconstructed or replaced unless such function can be carried out only in, on, or adjacent to a coastal water area because the use or facility requires access to the coastal water body;
 - (ii) Consultation in accordance with Sec. 206.348 shall be accomplished.
- (4) Special-purpose facilities. For the repair of facilities used for the study, management, protection or enhancement of fish and wildlife resources and habitats and related recreational projects; air and water navigation aids and devices and access thereto; and facilities used for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications; and, nonstructural facilities that are designed to mimic, enhance or restore natural shoreline stabilization systems:
 - (i) Consultation in accordance with Sec. 206.348 shall be accomplished;
 - (ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with Sec. 206.349.
- (5) Other public facilities. For the repair, reconstruction, or replacement of publicly owned or operated roads, structures, or facilities that do not fall within the categories identified in paragraphs (c)(1), (2), (3), and (4) of this section:
 - (i) No such facility may be repaired, reconstructed, or replaced unless it is an “existing facility;”
 - (ii) Expansion of the facility beyond its predisaster design is not permitted;
 - (iii) Consultation in accordance with Sec. 206.348 shall be accomplished;
 - (iv) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with Sec. 206.349.
- (6) Private nonprofit facilities. For eligible private nonprofit

facilities as defined in these regulations and of the type described in paragraphs (c)(1), (2), (3), and (4) of this section:

- (i) Consultation in accordance with Sec. 206.348 shall be accomplished.
 - (ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with Sec. 206.349.
- (7) Improved project. An improved project may not be approved for a facility in the CBRS if such grant is to be combined with other funding, resulting in an expansion of the facility beyond the predisaster design. If a facility is exempt from the expansion prohibitions of CBRA by virtue of falling into one of the categories identified in paragraph (c)(1), (2), (3), or (4) of this section, then an improved project for such facilities is not precluded.
- (8) Alternate project. A new or enlarged facility may not be constructed on a unit of the CBRS under the provisions of the Stafford Act unless the facility is exempt from the expansion prohibition of CBRA by virtue of falling into one of the categories identified in paragraph (c)(1), (2), (3), or (4) of this section.

§ 206.348 Consultation.

As required by section 6 of the CBRA, the FEMA Regional Director will consult with the designated representative of the Department of the Interior (DOI) at the regional level before approving any action involving permanent restoration of a facility or structure on or attached to a unit of the CBRS.

- (a) The consultation shall be by written memorandum to the DOI representative and shall contain the following:
- (1) Identification of the unit within the CBRS;
 - (2) Description of the facility and the proposed repair or replacement work; including identification of the facility as an exception under section 6 of CBRA; and full justification of its status as an exception;

- (3) Amount of proposed Federal funding;
 - (4) Additional mitigation measures required; and
 - (5) A determination of the action's consistency with the purposes of CBRA, if required by these regulations, in accordance with Sec. 206.349.
- (b) Pursuant to FEMA understanding with DOI, the DOI representative will provide technical information and an opinion whether or not the proposed action meets the criteria for a CBRA exception, and on the consistency of the action with the purposes of CBRA (when such consistency is required). DOI is expected to respond within 12 working days from the date of the FEMA request for consultation. If a response is not received within the time limit, the FEMA Regional Director shall contact the DOI representative to determine if the request for consultation was received in a timely manner. If it was not, an appropriate extension for response will be given. Otherwise, he or she may assume DOI concurrence and proceed with approval of the proposed action.
- (c) For those cases in which the regional DOI representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the FEMA Regional Director will submit the issue to the FEMA Assistant Associate Director for Disaster Assistance Programs (DAP). In coordination with the Office of General Counsel (OGC), consultation will be accomplished at the FEMA National Office with the DOI consultation officer. After this consultation, the Assistant Associate Director, DAP, determines whether or not to approve the proposed action.

§ 206.349 Consistency Determinations.

Section 6(a)(6) of CBRA requires that certain actions be consistent with the purposes of that statute if the actions are to be carried out on a unit of the CBRA. The purpose of CBRA, as stated in section 2(b) of that statute, is to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated

with the coastal barriers along with Atlantic and Gulf coasts. For those actions required, the FEMA Regional Director shall evaluate the action according to the following procedures, and the evaluation shall be included in the written request for consultation with DOI.

- (a) Impact identification. FEMA shall identify impacts of the following types that would result from the proposed action:
 - (1) Risks to human life;
 - (2) Risks of damage to the facility being repaired or replaced;
 - (3) Risks of damage to other facilities;
 - (4) Risks of damage to fish, wildlife, and other natural resources;
 - (5) Condition of existing development served by the facility and the degree to which its redevelopment would be encouraged; and
 - (6) Encouragement of new development.
- (b) Mitigation. FEMA shall modify actions by means of practicable mitigation measures that can be incorporated into the proposed action and will conserve natural and wildlife resources.
- (c) Conservation. FEMA shall identify practicable measures that can be incorporated into the proposed action and will conserve natural and wildlife resources.
- (d) Finding. For those actions required to be consistent with the purposes of CBRA, the above evaluation must result in a finding of consistency with CBRA by the Regional Director before funding may be approved for that action.

§§ 206.350-206.359 [Reserved]

Subpart K-Community Disaster Loans

Source: 55 FR 2314, Jan. 23, 1990, unless otherwise noted.

§ 206.360 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 417 of the Act.

§ 206.361 Loan Program.

- (a) General. The Associate Director, State and Local Programs and Support (the Associate Director) may make a Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster and which demonstrates a need for Federal financial assistance in order to perform its governmental functions.
- (b) Amount of loan. The amount of the loan is based on need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term fiscal year as used in this subpart means the local government's fiscal year.
- (c) Interest rate. The interest rate is the rate for five year maturities as determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This rate is from the monthly Treasury schedule of certified interest rates which takes into consideration the current average yields on outstanding marketable obligations of the United States, adjusted to the nearest 1/8 percent.
- (d) Time limitation. The Associate Director may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year. Only one loan may be approved under section 417(a) for any local government as the result of a single disaster.
- (e) Term of loan. The term of the loan is 5 years, unless otherwise extended by the Associate Director. The Associate Director may consider requests for an extension of loans based on the local government's financial condition. The total term of any loan under section 417(a) normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the Community Disaster Loan recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment. (See Sec. 206.367(c).)

- (f) Use of loan funds. The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the non-Federal share of any Federal program, including those under the Act.
- (g) Cancellation. The Associate Director shall cancel repayment of all or part of a Community Disaster Loan to the extent that he/she determines that revenues of the local government during the 3 fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.
- (h) Relation to other assistance. Any community disaster loans including cancellations made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance under the Act or these regulations.

§ 206.362 Responsibilities.

- (a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan and in the application for loan cancellation, if submitted, and comply with the assurances on the application, the terms and conditions of the Promissory Note, and these regulations. The local government shall send all loan application, loan administration, loan cancellation, and loan settlement correspondence through the GAR and the FEMA Regional Office to the FEMA Associate Director.
- (b) The GAR shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments

which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests in major disasters or emergencies.

- (c) The Regional Director or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Associate Director. He/she may submit appropriate recommendations to the Associate Director.
- (d) The Associate Director, or a designee, shall execute a Promissory Note with the local government, and the Office of Disaster Assistance Programs in Headquarters, FEMA, shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.
- (e) The Associate Director or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the GAR and the Regional Director. The Associate Director or designee shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.
- (f) The Comptroller shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

§ 206.363 Eligibility Criteria.

- (a) Local government.
 - (1) The local government must be located within the area designated by the Associate Director as eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.
 - (2) Criteria considered by FEMA in determining the eligibility of a local government for a Community Disaster Loan include the loss of tax and other revenues as a result of a major

disaster, a demonstrated need for financial assistance in order to perform its governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential municipal operating services to the community. Eligibility for other assistance under the Act does not, by itself, establish entitlement to such a loan.

(b) Loan eligibility

- (1) General. To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency and must demonstrate a need for financial assistance in order to perform its governmental functions. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting justification accompanying the application.
- (2) Substantial loss of tax and other revenues. The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:
 - (i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential municipal services provided prior to the disaster;
 - (ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year;
- (3) Demonstrated need for financial assistance. The local government must demonstrate a need for financial assistance in order to perform its governmental functions. The criteria used in making this determination include the following:

- (i) Whether there are sufficient funds to meet current fiscal year operating requirements;
- (ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;
- (iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;
- (iv) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;
- (v) Debt ratio (relationship of annual receipts to debt service);
- (vi) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;
- (vii) Displacement of revenue-producing business due to property destruction;
- (viii) Necessity to reduce or eliminate essential municipal services; and
- (ix) Danger of municipal insolvency.

§ 206.364 Loan Application.

(a) Application.

- (1) The local government shall submit an application for a Community Disaster Loan through the GAR. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see Sec. 206.367(c)).

- (2) The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy for the submission. The Governor's Authorized Representative may request the Regional Director to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State cannot legally participate in the loan application process.
- (b) Financial requirements.
 - (1) The loan application shall be developed from financial information contained in the local government's annual operating budget (see Sec. 206.364(b)(2)) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Position, a Debt History, Tax Assessment Data, Financial Projections, Other Information, a Certification, and the Assurances listed on the application.
 - (i) Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual financial presentations for the General Fund and all other funds maintained by the local government.
 - (ii) Each application for a Community Disaster Loan must also include:
 - (A) A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its annual Operating budget, and

- (B) A copy of the pertinent State statutes, ordinance, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.
- (2) Operating budget. For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures. For loan cancellation purposes, FEMA interprets the term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.
- (3) Operating budget increases. Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.
- (4) Revenue and assessment information. The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due. Tax revenues assessed but not collected, or other revenues which the local government chooses to forgive, stay, or otherwise not exercise the right to collect, are not a legitimate revenue loss for purposes of evaluating the loan application.
- (5) Estimated disaster-related expense. Unreimbursed disaster-related expenses of a municipal operating character should be estimated. These are discussed in Sec. 206.366(b).
- (c) Federal review.
 - (1) The Associate Director or designee shall approve a community disaster loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance to perform its governmental function as the result of the disaster.

- (2) Resubmission of application. If a loan application is disapproved, in whole or in part, by the Associate Director because of inadequacy of information, a revised application may be resubmitted by the local government within sixty days of the date of the disapproval. Decision by the Associate Director on the resubmission is final.
- (d) Community disaster loan.
 - (1) The loan shall not exceed the lesser of:
 - (i) The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent 3 fiscal years, or
 - (ii) 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.
 - (2) Promissory note.
 - (i) Upon approval of the loan by the Associate Director or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be co-signed by the State (see Sec. 206.364(d)(2)(ii)). The applicant should indicate its funding requirements on the Schedule of Loan Increments on the Note.
 - (ii) If the State cannot legally cosign the Promissory Note, the local government must pledge collateral security, acceptable to the Associate Director, to cover the principal amount of the Note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.

(Approved by Office of Management and Budget under Control Number 3067-0034)

§ 206.365 Loan Administration.

- (a) Funding.
 - (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of

Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.

- (2) When each incremental disbursement is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds. A sinking fund should be established to amortize the debt.
- (b) Financial management.
- (1) Each local government with an approved Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.
 - (2) FEMA auditors, State auditors, the GAR, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall, for the purpose of audits and examination, have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under these regulations.
- (c) Loan servicing.
- (1) The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the 3 subsequent fiscal years.
 - (2) The Headquarters, FEMA Office of Disaster Assistance Programs, will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant

adjustment of the scheduled disbursement of the loan proceeds.

- (3) The Headquarters, FEMA Office of Disaster Assistance Programs, shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.
- (d) Inactive loans. If no funds have been disbursed from the Treasury, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA. However, since only one loan may be approved, cancellation precludes submission of a second loan application request by the same local government for the same disaster.

§ 206.366 Loan Cancellation.

(a) Policies.

- (1) FEMA shall cancel repayment of all or part of a Community Disaster Loan to the extent that the Associate Director determines that revenues of the local government during the full three fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget for the local government, including additional unreimbursed disaster-related expenses for a municipal operating character. For loan cancellation purposes, FEMA interprets the term operating budget to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.
- (2) If the tax and other revenue rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster are reduced during the 3 fiscal years subsequent to the major disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster shall be used without reduction for purposes of

computing revenues received. This may result in decreasing the potential for loan cancellations.

- (3) If the local government's fiscal year is changed during the "full 3 year period following the disaster" the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period.
 - (4) If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures which are not disaster related, except increases due to inflation, the annual operating budget or operating statement expenditures will be reduced accordingly for purposes of evaluating any request for loan cancellation.
 - (5) It is not the purpose of this loan program to underwrite predisaster budget or actual deficits of the local government. Consequently, such deficits carried forward will reduce any amounts otherwise eligible for loan cancellation.
- (b) Disaster-related expenses of a municipal operation character.
- (1) For purpose of this loan, unreimbursed expenses of a municipal operating character are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and other expenses normally budgeted for the general fund, as defined by the Municipal Finance Officers Association.
 - (2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under project applications or other Federal programs are not eligible for loan cancellation.

- (3) Each applicant shall maintain records including documentation necessary to identify expenditures for unreimbursed disaster-related expenses. Examples of such expenses include but are not limited to:
 - (i) Interest paid on money borrowed to pay amounts FEMA does not advance toward completion of approved Project Applications.
 - (ii) Unreimbursed costs to local governments for providing usable sites with utilities for mobile homes used to meet disaster temporary housing requirements.
 - (iii) Unreimbursed costs required for police and fire protection and other community services for mobile home parks established as the result of or for use following a disaster.
 - (iv) The cost to the applicant of flood insurance required under Public Law 93-234, as amended, and other hazard insurance required under section 311, Public Law 93-288, as amended, as a condition of Federal disaster assistance for the disaster under which the loan is authorized.
- (4) The following expenses are not considered to be disaster-related for Community Disaster Loan purposes:
 - (i) The local government's share for assistance provided under the Act including flexible funding under section 406(c)(1) of the Act.
 - (ii) Improvements related to the repair or restoration of disaster public facilities approved on Project Applications.
 - (iii) Otherwise eligible costs for which no Federal reimbursement is requested as a part of the applicant's disaster response commitment, or cost sharing as specified in the FEMA-State Agreement for the disaster.
 - (iv) Expenses incurred by the local government which are reimbursed on the applicant's project application.
- (c) Cancellation application. A local government which has drawn loan funds from the Treasury may request cancellation of the principal and related interest by submitting an Application for

Loan Cancellation through the Governor's Authorized Representative to the Regional Director prior to the expiration date of the loan.

- (1) Financial information submitted with the application shall include the following:
 - (i) Annual Operating Budgets for the fiscal year of the disaster and the 3 subsequent fiscal years;
 - (ii) Annual Financial Reports (Revenue and Expense and Balance Sheet) for each of the above fiscal years. Such financial records must include copies of the local government's annual financial reports, including operating statements balance sheets and related consolidated and individual presentations for each fund account. In addition, the local government must include an explanatory statement when figures in the Application for Loan Cancellation form differ from those in the supporting financial reports.
 - (iii) The following additional information concerning annual real estate property taxes pertaining to the community for each of the above fiscal years:
 - (A) The market value of the tax base (dollars);
 - (B) The assessment ratio (percent);
 - (C) The assessed valuation (dollars);
 - (D) The tax levy rate (mils);
 - (E) Taxes levied and collected (dollars).
 - (iv) Audit reports for each of the above fiscal years certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants. The report should not include recommendations concerning loan cancellation or repayment.
 - (v) Other financial information specified in the Application for Loan Cancellation.
- (2) Narrative justification. The application may include a narrative presentation to amplify the financial material

accompanying the application and to present any extenuating circumstances which the local government wants the Associate Director to consider in rendering a decision on the cancellation request.

(d) Determination.

- (1) If, based on a review of the Application for Loan Cancellation and FEMA audit, when determined necessary, the Associate Director determines that all or part of the Community Disaster Loan funds should be cancelled, the principal amount which is cancelled will become a grant, and the related interest will be forgiven. The Associate Director's determination concerning loan cancellation will specify that any uncanceled principal and related interest must be repaid immediately and that, if immediate repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on a timely basis. Such repayments must be made to the Treasurer of the United States and be sent to FEMA, Attention: Office of the Comptroller.
- (2) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.
- (3) The uncanceled portion of the loan must be repaid in accordance with Sec. 206.367.
- (4) Appeals. If an Application for Loan Cancellation is disapproved, in whole or in part, by the Associate Director or designee, the local government may submit any additional information in support of the application within 60 days of the date of disapproval. The decision by the Associate Director or designee on the submission is final.

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§ 206.367 Loan Repayment.

- (a) Prepayments. The local government may make prepayments against a loan at any time without any prepayment penalty.
- (b) Repayment. To the extent not otherwise cancelled, Community Disaster Loan funds become due and payable in accordance with the terms and conditions of the Promissory Note. The note shall include the following provisions:
 - (1) The term of the loan made under this program is 5 years, unless extended by the Associate Director. Interest will accrue on outstanding cash from the actual date of its disbursement by the Treasury.
 - (2) The interest amount due will be computed separately for each Treasury disbursement as follows: $I = P \times R \times T$, where I = the amount of simple interest. P = the principal amount disbursed; R = the interest rate of the loan; and T = the outstanding term in years from the date of disbursement to date of repayment, with periods less than 1 year computed on the basis of 365 days/year. If any portion of the loan is cancelled, the interest amount due will be computed on the remaining principal with the shortest outstanding term.
 - (3) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.
 - (4) The Associate Director may defer payments of principal and interest until FEMA makes its final determination with respect to any Application for Loan Cancellation which the borrower may submit. However, interest will continue to accrue.
 - (5) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand.

- (6) In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.
- (c) Additional time. In unusual circumstances involving financial hardship, the local government may request an additional period of time beyond the original 10 year term to repay the indebtedness. Such request may be approved by the Associate Director subject to the following conditions:
 - (1) The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.
 - (2) The principal amount shall be original uncanceled principal plus related interest.
 - (3) The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate.
 - (4) The term of the new Promissory Note shall be for the settlement period requested by the local government but not greater than 10 years from the date the new note is executed.

§§ 206.368-206.389 [Reserved]

Subpart L-Fire Suppression Assistance

Source: 55 FR 2318, Jan. 23, 1990, unless otherwise noted.

§ 206.390 General.

When the Associate Director determines that a fire or fires threaten such destruction as would constitute a major disaster, assistance may be authorized, including grants, equipment,

supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland.

§ 206.391 FEMA-State Agreement.

Federal assistance under section 420 of the Act is provided in accordance with a continuing FEMA-State Agreement for Fire Suppression Assistance (the Agreement) signed by the Governor and the Regional Director. The Agreement contains the necessary terms and conditions, consistent with the provisions of applicable laws, Executive Orders, and regulations, as the Associate Director may require, and specifies the type and extent of Federal assistance. The Governor may designate authorized representatives to execute requests and certifications and otherwise act for the State during fire emergencies. Supplemental agreements shall be executed as required to update the continuing Agreement.

§ 206.392 Request for Assistance.

When a Governor determines that fire suppression assistance is warranted, a request for assistance may be initiated. Such request shall specify in detail the factors supporting the request for assistance. In order that all actions in processing a State request are executed as rapidly as possible, the State may submit a telephone request to the Regional Director, promptly followed by a confirming telegram or letter.

(Approved by the Office of Management and Budget under the Control Numbers 3067-0066)

§ 206.393 Providing Assistance.

Following the Associate Director's decision on the State request, the Regional Director will notify the Governor and the Federal firefighting agency involved. The Regional Director may request assistance from Federal agencies if requested by the State. For

each fire or fire situation, the State shall prepare a separate Fire Project Application based on Federal Damage Survey Reports and submit it to the Regional Director for approval.

§ 206.394 Cost Eligibility.

- (a) Cost principles. See 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A-87, Cost Principles for State and Local Governments.
- (b) Program specific eligible costs.
 - (1) Expenses to provide field camps and meals when made available to the eligible employees in lieu of per diem costs.
 - (2) Costs for use of publicly owned equipment used on eligible fire suppression work based on reasonable State equipment rates.
 - (3) Costs to the State for use of U.S. Government-owned equipment based on reasonable costs as billed by the Federal agency and paid by the State. Only direct costs for use of Federal Excess Personal Property (FEPP) vehicles and equipment on loan to State Forestry and local cooperators, can be paid.
 - (4) Cost of firefighting tools, materials, and supplies expended or lost, to the extent not covered by reasonable insurance.
 - (5) Replacement value of equipment lost in fire suppression, to the extent not covered by reasonable insurance.
 - (6) Costs for personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety.
 - (7) Mobilization and demobilization costs directly relating to the Federal fire suppression assistance approved by the Associate Director.
 - (8) Eligible costs of local governmental firefighting organizations which are reimbursed by the State pursuant to an existing cooperative mutual aid agreement, in suppressing an approved incident fire.
 - (9) State costs for suppressing fires on Federal land in cases in which the State has a responsibility under a cooperative

agreement to perform such action on a non-reimbursable basis. This provision is an exception to normal FEMA policy under the Act and is intended to accommodate only those rare instances that involve State fire suppression of section 420 incident fires involving co-mingled Federal/ State and privately owned forest or grassland.

- (10) In those instances in which assistance under section 420 of the Act is provided in conjunction with existing Interstate Forest Fire Protection Compacts, eligible costs are reimbursed in accordance with eligibility criteria established in this section.
- (c) Program specific ineligible costs.
 - (1) Any costs for presuppression, salvaging timber, restoring facilities, seeding and planting operations.
 - (2) Any costs not incurred during the incident period as determined by the Regional Director other than reasonable and directly related mobilization and demobilization costs.
 - (3) State costs for suppressing a fire on co-mingled Federal land where such costs are reimbursable to the State by a Federal agency under another statute (see 44 CFR part 151).

§ 206.395 Grant Administration.

- (a) Project administration shall be in accordance with 44 CFR part 13, and applicable portions of subpart G, 44 CFR part 206.
- (b) In those instances in which reimbursement includes State fire suppression assistance on co-mingled State and Federal lands (§206.394(b)(9)), the Regional Director shall coordinate with other Federal programs to preclude any duplication of payments. (See 44 CFR part 151.)
- (c) Audits shall be in accordance with the Single Audit Act of 1984, Pub. L. 98-502. (See subpart G of this part.)
- (d) A State may appeal a determination by the Regional Director on any action related to Federal assistance for fire suppression. Appeal procedures are contained in 44 CFR 206.206.

§§ 206.396-206.399 [Reserved]

